Supreme Court, U.S.
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No. 01-1712

In The
Supreme Court of the United States

EVA CHARLENE SARDONELL and
DOUGLAS SARDONELL,

Petitioners,

v.

GARY NORIEGA, individually, and as a Council Member, City of Powder Springs; WAYNE WRIGHT, individually, and as City Manager, City of Powder Springs; RICHARD SAILORS, individually, and as Mayor, City of Powder Springs; VINCE BLACKMON, individually, and as Code Compliance Officer, City of Powder Springs; and the CITY OF POWDER SPRINGS,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

CARYL SUMNER BLACK
(neé Caryl Brinson Sumner)
Counsel of Record
CARYL SUMNER BLACK, P.C.
5015 Oak Bluff Court
Atlanta, Georgia 30350
(770) 390-0101

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

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REASONS FOR DENYING THE WRIT

Succinctly stated, the Eleventh Circuit Court of Appeals' ruling does not conflict with *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229 (1969). The seminal issue in *Sullivan* is not the issue of race. The controlling issue in granting standing in *Sullivan* and its progeny is whether a nexus exists between a property interest and a discriminatory interference with that property interest. Neither the record nor the decision below raises the question presented by the Petitioner. The issue of standing was never raised nor addressed by either the District Court or the Eleventh Circuit Court of Appeals.

Despite Petitioners' histrionics, the facts in the case demonstrate no more than Respondents' enforcement of the City's Home Occupation Ordinance. All of Respondents' actions were taken because of business activity at the house owned solely by Douglas Sardonell (the 3891 house). Respondents took no action that affected the rental house owned by Eva Sardonell (the 3890 house). There is no nexus between Eva Sardonell's property interest and any action taken by Respondents. The nexus between a property interest and an interference with that property interest required by *Sullivan* does not exist. The Eleventh Circuit Court of Appeals correctly held that "no connection exists between the alleged acts and a violation of 42 U.S.C. § 1982."

The Eleventh Circuit Court of Appeals' decision is in conformity with *Sullivan v. Little Hunting Park, Inc.* As such, the Eleventh Circuit Court of Appeals' decision should be upheld.

The Question of Law presented to this Court is misrepresented. For the arguments set forth throughout this

brief, the Question of Law before this Court should be summarily dismissed.

A. The Petition misrepresents the facts in the case.

Petitioners Douglas and Eva Charlene Sardonell own two houses in the City of Powder Springs, Georgia. Douglas Sardonell owns one house located at 3891 Blythewood Circle, Powder Springs, Georgia (hereinafter the "3891 house") and operates a business, A Cool Flame Heating & Air Conditioning ("A Cool Flame"), from that house. Douglas Sardonell is the sole owner of A Cool Flame. Eva Charlene Sardonell owns a house located at 3890 Blythewood Circle, Powder Springs, Georgia (hereinafter the "3890 house").

Since October of 1995, Douglas Sardonell has been in possession of a business (home occupation) license issued by the City of Powder Springs. App. 4. In 1995 Douglas Sardonell was the only employee of A Cool Flame. D. Sardonell depo., p. 12, line 17. The business used one vehicle, a van, in its operations. D. Sardonell depo., p. 12, line 24 and p. 13, line 2. The business prospered. In February of 1998 a second van was purchased for the business. D. Sardonell depo., p. 15, line 9. In March of 1999 the business had three full-time employees. D. Sardonell depo., p. 15, line 11. As of March 2000, the business utilized three vans and one mid-sized pickup truck. D. Sardonell depo., p. 14, line 2. Neighbors noted the increase in business activity at the house. Sitherwood depo., pp. 19-21, lines 20-6; Murphy depo., pp. 36-37, lines 1-25.

Respondent Gary Noriega is a member of the City Council for the City of Powder Springs. Noriega depo., p. 8, line 14. Councilman Noriega has lived in Blythewood Estates, the same subdivision as the Sardonells, since 1986. Noriega deposition, p. 12, line 23. In either the end of 1997 or the beginning of 1998, Councilman Noriega began to receive second and third hand complaints concerning the Sardonells' business activities at the 3891 house. Noriega deposition, p. 37, lines 4-18.

A couple of weeks later, Noriega rode by the Sardonell residence (the 3891 house) and personally noticed the business activity. Noriega depo. p. 41, lines 14-16 and p. 43, lines 6-10. Noriega turned the complaint over to the City Manager, Respondent Wayne Wright. Noriega depo., p. 38, lines 14-18. After receiving the complaints, Manager Wright asked Respondent Vince Blackmon, the City Code Enforcement Officer, to investigate the complaints against the Sardonells. Mr. Blackmon inspected Douglas Sardonell's property and orally informed him of the violations of the City Home Occupation Ordinance. Wright deposition, p. 65, line 16. Upon receipt of an anonymous complaint of business activity and without further direction, Blackmon sent a warning letter to the Sardonells on January 25, 1999. Wright deposition, p. 66, line 5.

Following receipt of the warning letter, the Sardonells appeared before the Mayor and City Council at the March 1, 1999 City Council meeting. Doug Sardonell requested a land use permit to allow him to do what he could not do under the provision of the Home Occupation Ordinance:

park two commercial vehicles at 3891 Blythewood Circle.[1] Pet.App. 37; App. 14 and 23.

The Sardonells told the Mayor and City Council that they would be moving their business to a location that was commercially zoned on April 1, 1999. App. 14 and 21. Later in the meeting they asked how to handle the business license when they relocated. App. 21. The Mayor and City Council informed the Sardonells that they did not have to apply for a new license, but they could simply file a change of address. App. 37.

In response to the Sardonells' request, the Mayor and City Council voted to continue Doug Sardonell's application for a land use permit until the April 5, 1999 meeting of the Mayor and City Council. App. 15 and 35. The stated purpose of the vote was to allow the Sardonells to continue to have two vans on their property until the first meeting in April. App. 15 and 35.

On April 5, 1999, Eva Sardonell appeared before the Mayor and City Council of the City of Powder Springs at the regularly called City Council meeting and stated that the business had been relocated to a commercially zoned site at 4018 Lindley Road, Suite B, Powder Springs, Georgia. App. 45 and 50. Eva Sardonell stated to the Mayor and City Council that even though the business had been relocated to the Lindley Road address, that she wanted to pursue the land use permit for 3891 Blythewood Circle because she wanted to be able to park the vans there if she needed to. App. 49.

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[1] Although the District Court did not rely upon the transcripts of the March 1, 1999 and April 5, 1999 city council meetings, reference to the transcripts is made to establish the chronology of events.

The City Attorney Ms. Bandy instructed Plaintiff Eva Sardonell that as long as Doug Sardonell did not have a business license for and was not conducting a business from the 3891 Blythewood Circle house, there were no zoning restrictions that would prohibit the Sardonells from parking their vehicles at their home. App. 52. Although Mrs. Sardonell wanted assurance that she was free to park her vans at her home, Ms. Bandy made it clear to her that she was not in a position to tell her whether she could possibly be in violation of some other City ordinance. App. 52.

After being informed by the City Attorney that the appropriate action was to vote to withdraw the Sardonells' request because it was no longer necessary, the Mayor and City Council voted affirmatively to grant the withdrawal of the land use permit application. App. 45 and 53. Plaintiffs made no allegations at the meeting that they had been wrongly targeted by the City. Pet.App. 12.

Douglas Sardonell transferred his business license from 3891 Blythewood Circle to the new location of their business. See Catherine Raper Affidavit.[2] App. 57-63. Despite the Sardonells' statement that they had moved the business to a commercially zoned location, business activities continued at the 3891 house.

After receiving continuing complaints of business activities at the 3891 Blythewood Circle residence, Manager Wright asked the Chief of Police to issue a citation to the Sardonells. W. Wright deposition, p. 109, line 5.

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[2] Although the District Court did not rely upon the affidavit of Catherine Raper, reference to the affidavit is made to establish the chronology of events.

Despite Petitioners' statement to the contrary, Wright's request was in the normal course of business; he had asked the police chief to issue citations before. W. Wright deposition, p. 109, line 23. The citation was issued by Lt. Freeland, the police officer charged at that time with the issuance of citations. See deposition of Lt. Freeland, p. 50, lines 23-25.

On April 19, 1999, Lt. James Freeland of the City of Powder Springs Police Department went to 3891 Blythewood Circle to issue a citation for operating a business without a license. App. 6 and the deposition of James E. Freeland along with a copy of the citation attached thereto. Plaintiff Eva Sardonell answered the door. Officer Freeland issued the citation to Eva Sardonell. See deposition of James E. Freeland, p. 50, lines 23-24.

As stated by Manager Wright, the procedure followed in the issuance of the citation to Eva Sardonell is the same procedure followed in instances of other flagrant code violations. W. Wright deposition, pp. 98-102.

In another instance in the same neighborhood, the exact same process was followed: a complaint was received by Manager Wright from Councilman Noriega. W. Wright deposition, p. 99, line 8. Manager Wright requested that Vince Blackmon investigate the complaint and address it. W. Wright deposition, p. 100, line 3. The citizen, Gordon Powell, was ultimately cited for violation of his home occupation license. Citizen Powell was cited; pled guilty; paid a fine; and had his license revoked. W. Wright deposition, p. 101, line 9.

Manager Wright made no distinction in the handling of the actions concerning the Sardonell ordinance violation at the 3891 house and any other ordinance violation. The

one distinction in the present instance is that the Sardonells' "scoffed" at City regulations. The Sardonells were fully aware of the requirements of the Code of Ordinances of the City of Powder Springs and continued to violate them over and over. Wright depo. p. 48, lines 11-20. Despite a verbal warning and the issuance of a warning letter, the Sardonells continued to flagrantly violate City ordinances. As a consequence, a citation was issued. All actions taken by Manager Wright were based upon legitimate government concerns, not discrimination. Petitioners' have never denied violating the City's Home Occupation Ordinance.

Once the citation had been issued, Eva Sardonell requested that the case be transferred to state court. Pet.App. 13, footnote 7. Despite Petitioners' allegations to the contrary, once the request had been made, the state court took jurisdiction. The Cobb County State Court calendar determined the date and time for disposition of the case. Once Eva Sardonell requested that her case be transferred to State Court, the length of time her charges remained pending was outside the hands of the City and controlled by the Cobb County State Court. The Cobb County Solicitor ultimately dropped the charges against Eva Sardonell because she was not the owner of A Cool Flame. The merits of the case were never reached.

In September 1998, Eva Sardonell rented the 3890 house to an African-American family, allegedly pursuant to Section 8 of the U.S. Department of Agriculture Housing Program. App. 4. Although Petitioners' claim that the African-Americans residing in Eva Sardonell's house were "the only African-Americans residing in the street," other African-American families lived in the neighborhood. Murphy depo., p. 19, lines 10-13; Sitherwood depo., p. 14,

lines 8-10. Indeed, as documented in the Year 2000 U.S. Census data for the City of Powder Springs, Georgia, one-third of the City's population is African-American. App. 64-69.

Petitioners argue that the City investigated and enforced violations of its Home Occupations Ordinance only because Eva Sardonell rented the 3890 house to African-Americans. Despite Petitioners' histrionics, Petitioners have proven no nexus between Respondents' enforcement of the Home Occupation Ordinance at the 3891 house and the renting of the 3890 house. The 3890 house and the 3891 house are individually owned by Eva and Douglas Sardonell. The uses of the two houses are separate. No nexus or connection between the two houses has been alleged or proven. No nexus or connection between Respondents' actions and the 3890 house exists. No action taken by Respondents affected the 3890 house, Eva Sardonell's ownership of the 3890 house or her relation with her tenants. Petitioners have presented no nexus to establish the alleged violation of federal law and Respondents' actions. Petitioners have misrepresented the facts to this Court.

B. The Petition misrepresents the Question of Law before this Court.

Petitioners' Question Presented is, "Whether white citizens who are discriminated against by government officials for renting property to black citizens, thereby have a cause of action under 42 U.S.C. § 1982." Petitioners misrepresent the question of law to this Court. Despite Petitioners' arguments to the contrary, 42 U.S.C. § 1982 has been broadly construed to provide standing to any

citizen regardless of race when that citizen experiences an interference with one of the bundle of sticks inherent in real property rights.[3] *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229 (1969). The nexus or connection between the ownership interest and the violation of a real property right is the basis for standing in a 42 U.S.C. § 1982 case. All cases relied upon by Petitioners are based upon that nexus.

In the present case, there is no nexus or connection between Petitioners' allegations and Respondents' actions. All actions taken by Respondents were in the enforcement of the City's Home Occupation Ordinance at the 3891 house. All of Petitioners' allegations are based upon activity at the 3891 house, the house owned by Douglas Sardonell, the house from which Mr. Sardonell runs his business. App. 1-10. Eva Sardonell has no ownership interest in the 3891 house.

Eva Sardonell is the sole owner of the 3890 rental house. None of Petitioners' allegations refer to any action concerning the 3890 house. The complaints and voluminous pleadings filed in this case are silent as to any retaliatory action against the 3890 house or to its renters. App. 70-88.

White citizens are consistently granted standing in an action under 42 U.S.C. § 1982. Race is not an issue. Petitioners have misstated the question of law before the Court. Petitioners are suggesting that the Court find

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[3] 42 U.S.C. §1982 states "all citizens of the United States shall have the same right in every state or territory as enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property."

standing under 42 U.S.C. § 1982 for a case where no nexus exists between an ownership interest in real property and an interference with that property right. Petitioners' actual question is outside existing law. There is no nexus between Respondents' actions and the 3890 rental house. The question as presented is a blatant misstatement of law.

C. The Petition misstates the basis for the U.S. District Court for the Northern District of Georgia's, Atlanta Division, dismissal of Petitioners' 42 U.S.C. § 1982 allegation.

Despite Petitioners' allegations to the contrary, the District Court did not rely upon the issue of standing in addressing Petitioners' § 1982 claim. The District Court's order was silent as to standing. District Court Judge Carnes made two references to standing. Those references were to standing under the Fair Housing Act and 42 U.S.C. § 1981 and were not dispositive of the dismissal of the claims.[4]

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[4] As to standing under the Fair Housing Act, the Court states: "Indeed, Plaintiffs fail to allege any impact on the rental of their home to the African-American family, and it would seem that Plaintiffs lack any standing to bring an FHA claim." Pet. App. 22.

As to their 42 U.S.C. § 1981 claim, District Court Judge Carnes states, "Plaintiffs, however, do not appear to be alleging that they were discriminated against because they were white, but rather, because they entered into a contract with a black person. Plaintiffs have not cited any case law allowing this sort of 'association' claim under § 1981. Furthermore, while there are circumstances where a plaintiff may have standing to assert a claim on behalf of a third party, plaintiffs have not alleged that this is what they are doing, nor do the facts indicate that third-party standing would be appropriate in this case.

(Continued on following page)

Despite Petitioners' allegations to the contrary, the "single unified theme" in the District Court's order is not a lack of standing. The "single unified theme" is Petitioners' continuous failure to substantiate their unfounded claims.

Petitioners have taken the District Court's order completely out of context. Judge Carnes did not dismiss Petitioners' 42 U.S.C. § 1982 claim because Petitioners were white. Judge Carnes' order stated,

> Plaintiffs' fourth claim alleges a violation of 42 U.S.C. 1982. Section 1982 provides: 'All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey [sic] real and personal property.' Again, as with the claims discussed above, plaintiffs have failed to describe the legal underpinnings of their claim, and plaintiffs' situation would not appear to fit within the scope of a § 1982 claim. In a typical § 1982 claim, a plaintiff must show: (1) that he is a member of a racial minority; (2) that he applied for and was qualified to rent or purchase certain property or housing; (3) that he was rejected; and (4) that the housing or rental opportunity remained available thereafter. *Bell v. Mike Ford Realty Co.,* 857 F. Supp. 1550 (S.D.Ala. 1994). Plaintiffs' claim simply does not fit this framework, and plaintiffs

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More importantly perhaps, plaintiffs have not asserted that defendants interfered with their ability to 'make and enforce contracts.' None of the defendants' actions related to the agreement between [Eva] Sardonell and the tenants, and there is no indication that the rental agreement was impacted in any way by defendants' alleged actions. Accordingly, defendants' motion for summary judgment is granted as to plaintiffs' § 1981 claim." Pet.App. 30-31.

> have provided the Court with no further explanation of why they feel they have a cognizable § 1982 claim. Accordingly, plaintiffs' § 1982 claim fails as a matter of law.

Pet.App. 31-32.

The question of standing for a white person under 42 U.S.C. § 1982 was irrelevant to Judge Carnes: "Petitioners [had not] provided the court with any explanation of why they felt they had a cognizable § 1982 claim. As such their argument failed."[5]

Petitioners were not denied standing. They failed to state and prove a claim under 42 U.S.C. § 1982. Petitioners claim that they were denied standing is patently untrue.

D. The Eleventh Circuit Court of Appeals' ruling does not conflict with *Sullivan v. Little Hunting Park, Inc.*

Petitioners allege that the Eleventh Circuit Court's decision conflicts with *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229 (1969). Petitioners argue that the Eleventh Circuit Court of Appeals order is in conflict with the right of white citizens to have standing under 42 U.S.C. § 1982.

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[5] See also Judge Carnes' order, Pet.App. 32-34, concerning the dismissal of Petitioners' § 1985 cause of action: "As with their other claims, plaintiffs have done nothing more than repeat the facts with no explanation of their legal significance. Plaintiffs have not alleged that they were a member of a class discriminated against and have not alleged a conspiracy with specificity. Accordingly, plaintiffs' § 1985 claim fails as well."

As argued throughout this brief, the issue of standing to white citizens under 42 U.S.C. § 1982 is not at issue. Further, the Eleventh Circuit Court of Appeals did not deny Petitioners standing under 42 U.S.C. § 1982.

In its order the Eleventh Circuit Court relied not upon the issue of standing, but upon the lack of connection or nexus between the alleged acts and the violation of the law. The Eleventh Circuit Court stated, "The basis of the [district court] order is that *there was no connection between the alleged acts and a violation of the Fair Housing Act or 42 U.S.C. §§ 1981, 1982, 1983 and 1985*. Plaintiff's appeal. We affirm." Pet.App. 3. [emphasis added].

The Eleventh Circuit Court's holding in the present case is directly in line with *Sullivan v. Little Hunting Park, Inc.* Little Hunting Park, Inc. is a corporation chartered to operate a community swimming pool. Sullivan, a white property owner, sold his house to an African-American. As part of the transaction, Sullivan assigned his membership share for use of the community swimming pool to his purchaser. Little Hunting Park, Inc. refused to approve the assignment of the membership share because the assignee was an African-American. Sullivan brought suit. This Court held that the refusal to approve the assignment of the share interest was an interference with a right to lease and in violation of 42 U.S.C. § 1982.

The fact that Sullivan, a white male, was granted standing was not the dispositive issue in the *Sullivan* case. The dispositive factor in *Sullivan* as well as in all other cases cited by Petitioners is the nexus between the named plaintiff and the affected property right. No reported case holds or suggests that a cause of action under 42 U.S.C. § 1982 exists when there is no nexus between

the owner of property and an alleged harm to his/her property right.

In *Sullivan* Mr. Sullivan was denied one of his real property rights when the assignment of the lease was denied. He had standing to bring a 42 U.S.C. § 1982 case.

Barrows v. Jackson, 346 U.S. 249 (1953), the second case cited by Petitioners, involves interference with a real property right. In *Barrows*, petitioner, a white woman, was subject to an $11,600.00 fine for breeching a restrictive covenant forbidding the sale of realty to non-Caucasians. Petitioner was granted standing because an $11,600.00 judgment could be levied against her for violation of the covenant. Petitioner could thus suffer financial injury. Petitioner's potential injury was based upon her ownership of real property. The nexus for standing under 42 U.S.C. § 1982 existed because of interference with one of petitioner's property rights. Petitioner's race was irrelevant.

All other cases cited by Petitioners contain a similar real property nexus. [*Cutting v. Muzzey*, 724 F.2d 259 (1st Cir. 1984), subdivision developer/owner found to have standing because racial animus demonstrated by "outrageous development requirement imposed"; *Dale v. City of Chicago,* 672 F. Supp. 330 (N.D. Ill. 1987), landlords/owners had cause of action against city officials alleging that city officials punished them for renting their property to black tenants causing them to lose federal funding; *Des Vergnes v. Seekonk Water District,* 601 F.2d 9 (1st Cir. 1979), low income housing developer/owner had cause of action alleging that water district's denial of developer's permit discriminated against housing to be built for low income and black persons; *Pisello v. Town of*

Brookhaven, 933 F. Supp. 202 (E.D.N.Y. 1996), property management company which provided housing to low income minorities had cause of action against the town of Brookhaven for allegedly refusing to issue permits for the company's office space and for closing the company's offices without notice.] In each of the above noted cases, the named parties owned the property in question. The question of race was irrelevant. Standing was granted because a nexus or connection existed between an ownership interest in property and a discriminatory interference with a property right.

This Court, in *Warth v. Seldin,* 422 U.S. 490, 95 S. Ct. 2197 (1975), defined the parameters for standing.

> The question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues. This inquiry involves both constitutional limitations on federal court jurisdiction and prudential limitation on its exercise. [citations omitted]. In both dimensions it is founded in concern about the proper and properly limited role of the courts in the democratic society. [citations omitted].

Id. at 498.

This Court continues,

> In its constitutional dimension standing imports justiciability: whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Article III. This is the threshold question in every federal case, determining the power of the court to entertain the suit. As an aspect of justiciability, the standing question is whether the plaintiff has 'alleged such a personal stake in the outcome of the

> controversy' as to warrant his invocation of federal court jurisdiction and to justify an exercise of the court's remedial powers on his behalf . . . A federal court's jurisdiction, therefore, can be invoked only when the plaintiff himself has suffered 'some threatened or actual injury resulting from the putatively illegal action.'

Id. at 500.

Although the *Warth* court notes that a person may invoke the rights of others, the court states, "Even when the plaintiff has alleged injury sufficient to meet the case or controversy requirement, this court has held that the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Id.* at 500.

The *Warth* court completes its analysis by noting that "a plaintiff's right to standing must remain based upon a distinct and palpable injury to himself." *Id.* at 501.

There are no further parameters for standing in a 42 U.S.C. § 1982 case. Standing must be based upon a distinct and palpable injury to an individual. The following cases demonstrate the limitations of these parameters.

In *Inland Mediation Board v. City of Pomona,* 158 F. Supp. 2d 1120 (2001), an African-American plaintiff alleged that she had heard the director of a city landlord association state that he would not rent to African-Americans. The Director encouraged other landlords to not rent to African-Americans also. After hearing the remarks, the plaintiff became afraid to live in the city and brought a 42 U.S.C. § 1982 suit. In disallowing the claim the court stated,

> § 1982 must be construed broadly, however, [that] does not affect the rule that the 'property rights' protected under § 1982 are those included in the 'bundle of rights' for which an individual pays when he or she leases a piece of property (quoting *Bradley v. Carydale Enterprises,* 730 F. Supp. 709, 717 (E.D.Va. 1989) (citing to *Tillman v. Wheaton-Haven Recreation Assn.,* 410 U.S. 431, 437, 93 S. Ct. 1090, 35 L.Ed.2d 403 (1973)).

Id. at 1155.

> . . . the present case is clearly distinguishable from cases in which § 1982 claims were upheld against third parties because they directly and/or physically interfered with the plaintiff's exercise of their property rights. See *e.g. Sullivan v. Little Hunting Park, Inc.,* 396 U.S. 229 (1969) . . . . the discriminatory comments, while potentially unlawful, . . . did not rob plaintiff . . . of one of the property rights for which she bargained when she entered into her lease agreement. Accordingly, summary adjudication in favor of defendants in plaintiff's § 1982 claim is hereby granted.

Id. at 1155.

In another analogous case, *Graves v. Van Buskirk,* 1991 WL 21545 (Ohio App. 9 Dist.), plaintiff, an African-American, brought suit against defendants alleging that defendants' children had harassed plaintiff and vandalized his home. The court, in finding that a 42 U.S.C. § 1982 cause of action was not supportable, stated,

> The broad sweeping language of § 1982 must not be construed too narrowly. (*Sullivan,* at 237). On

> the other hand, the statute is not a comprehensive open housing law. (*Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968)). Section 1982 generally prohibits 'discrimination in the sale or rental or real or personal property.' (*Patterson v. McClean Credit Union*, 491 U.S. 164 (1989)). Its primary focus is on transactions in property. (*Abel v. Bonfanti*, 625 F. Supp. 263 (S.D.N.Y. 1985)).
>
> The Graves contend that the Van Buskirk children contravened their rights to 'lease' and 'hold' property under § 1982. The Van Buskirks were not the Graves' landlords but merely neighboring leaseholders. The Graves do not cite, and we are unable to locate, any prior cases applying § 1982 in this non-transactional manner . . .
>
> The U.S. Supreme Court has held that interference with a leasehold may violate § 1982. (*Sullivan*, at 237) . . . . The facts we confront present an entirely different situation . . .
>
> Our attention has been directed to *Stackhouse v. DeSitter*, 566 F. Supp. 865 (N.D.Ill. 1983), reconsidered in part (1985) 620 F. Supp. 208, which displays similarities to the instant case . . . In reconsidering its original decision refusing to apply § 1982 the [*Stackhouse*] court held that § 1982 simply does not extend to 'every act of racial discrimination that is somehow related to housing.' We agree.

Id. at 2154.

The *Inland Mediation Board* and *Graves* cases are clearly analogous to the facts in the present case. There is no effect upon the leasing or ownership of property.

In *City of Memphis v. Greene,* 451 U.S. 100, 101 S. Ct. 1584 (1981), this Court held that the city's closing of a street, causing black residents to use an alternative street, did not violate 42 U.S.C. § 1982. In so holding, the Court stated,

> The street closing did not violate § 1982. The evidence failed to show that the street closing would prevent blacks from exercising the same property rights as whites, [or] that it depreciated the value of blacks' property, or that it severely restricted access to blacks' homes. Rather, the record disclosed that respondents' only injury is the requirement that one street rather than another must be used for certain trips within the city. Such an injury does not involve any impairment to the kind of property rights identified as being within the reach of § 1982.

Id. at 101. See also *Westray v. The Porthole, Inc.,* 586 F. Supp. 834 (1984), involving standing under 42 U.S.C. § 1981.

The seminal issue in granting standing under 42 U.S.C. § 1982 is an interference with a real property right. In the present case none of the actions Petitioners allege Respondents have taken have affected Eva Sardonell's property rights. As such, Petitioners' arguments fail.

Petitioners blatantly misstate the Eleventh Circuit Court of Appeals' ruling. Petitioners state, "The Eleventh Circuit lets stand without even a comment the District Court's conclusion that Petitioners as white citizens were without standing." Pet. 18.

In actuality, the Eleventh Circuit Court stated,

> Defendants moved for summary judgment. The [district] court considered the arguments. It [the district court] entered a carefully drawn order of 37 pages granting Defendants' motion. *The basis of the order is that there was no connection between the alleged acts and a violation of the Fair Housing Act, or 42 U.S.C. §§ 1981, 1982, 1983 and 1985.* Plaintiffs appeal. We affirm.

Pet.App. 2-3. (emphasis added).

The Eleventh Circuit Court affirmed the District Court's order finding "no connection between the alleged acts and the violation of the cited laws." Standing was not an issue before the court. The nexus between the alleged actions of Respondents/Defendants and the cited Civil Rights Acts was the issue. Both the District Court and the Eleventh Circuit Court found no connection between Petitioners' allegations and the applicable law. Respondents'/Defendants' motion for summary judgment was granted. To state to this Court that the District Court and the Eleventh Circuit Court of Appeals did not fully consider the issues before them is erroneous. Both the District Court and the Eleventh Circuit Court of Appeals upheld law clearly established by this Court. To now intimate to this Court that the Eleventh Circuit's decision conflicts with *Sullivan v. Little Hunting Park, Inc.* is erroneous. Petitioners' writ should be summarily dismissed and all costs cast on the Petitioners.

E. Neither the record nor the decisions below raise the Question Presented by the Petition.

The Question Presented by Petitioners has not been previously argued in this case. Petitioners argue that the District Court denied them standing under 42 U.S.C. § 1982 because they are white citizens. Petitioners further state that the Eleventh Circuit Court of Appeals affirmed this denial of standing. Pet. 3 and 17. As argued throughout this brief, the District Court did not address standing in its grant of summary judgment to Respondents under 42 U.S.C. § 1982.

Petitioners' question presented has not been previously argued in this case and is outside the scope of appeal.

F. The Petition misstates the legal standard for summary judgment.

Summary judgment is appropriate when there is no genuine issue as to any material fact. *Celotex Corp. v. Catrett,* 477 U.S. 317, 322 (1986) at 322-23 (quoting F.R.C.P. 56(c)).

In a motion for summary judgment, the movant bears the initial responsibility of asserting the basis for his motion. *Celotex Corp. v. Catrett,* 477 U.S. 317, 322 (1986) at 323. However, the movant is not required to negate his opponent's claim. The movant may discharge his burden by merely "'showing' – that is, pointing out to the District Court – that there is an absence of evidence to support the non-moving party's case." *Id.* at 325. After the movant has carried his burden, the non-moving party is then required to "go beyond the pleading" and present competent

evidence designating "specific facts showing that there is a genuine issue for trial." *Id.* at 324. F.R.C.P. 56(e) requires that an adverse party attempting to overcome a motion for summary judgment to " . . . not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him." While the court is to view all evidence and factual inferences in a light most favorable to the non-moving party, *Samples v. City of Atlanta,* 846 F.2d 1328, 1330 (11th Cir. 1988), "the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) at 247-48 (1986).

In the present case Petitioners did not meet their burden of proof. They did not go beyond their pleading. No evidence was presented showing more than an alleged factual dispute. There was no genuine issue of material facts. Petitioners here, just as in the courts below, simply reiterate the factual allegations set forth in their complaint. Petitioners offered no proof that such facts were true or material. As stated in *Celotex,* if the non-movant fails to introduce significant credible evidence sufficient to show that a reasonable jury could find for the non-movant, the movant is entitled to summary judgment; the non-movant has failed to "make a sufficient showing on an essential of their case with respect to which they have the burden of proof." *Celotex* at 323.

In addition, the local rules of the Northern District, Atlanta Division require the nonmovant of a motion for summary judgment to respond to each of the movant's numbered material facts. The rules state, "All material facts contained in the moving party's statement which are not specifically controverted by the respondent's statement should be deemed admitted." LR 56.1.B.(2), NDGa. Rather than comply with this rule, Petitioners, in response to Respondents' motion for summary judgment, filed their own statement of material facts, which made no reference to Respondents' statement of material facts. While the District Court could have deemed all of Respondents' facts admitted, the Court attempted "to discern" which facts Petitioners intended to deny. Facts to which Petitioners made no response, however, were deemed admitted. (Pet.App. 6, footnote). Despite this generous assistance from the Court, Petitioners failed to state material facts necessary to overcome Respondents' motion for summary judgment.

When reviewing a grant of summary judgment, a circuit court may affirm the grant of summary judgment if there exists any adequate ground for doing so, regardless of whether that ground was one of the rationale on which the District Court relied. *Fitzpatrick v. City of Atlanta*, 2 F.3d 112, 117 (11th Cir. 1993). In the present case, Petitioners never went beyond their initial pleading. Further, the District Court's generous reading of Petitioners' statement of facts clearly provided adequate rationale for the affirmance of the grant of summary judgment.

G. The Petition misstates the viability of the defenses of qualified immunity, legislative immunity and sovereign immunity.

Petitioners argue in a lengthy footnote that the District Court incorrectly

> suggested that the individual respondents were entitled to qualified immunity . . . the District Court further suggested that Respondent Noriega was entitled to legislative immunity . . . the District Court suggested that Petitioners could *not* establish municipal liability against respondents under *Monell v. Dept. of Social Services,* 436 U.S. 658 (1978) . . .

Pet. 24, footnote 4.

As Petitioners noted, the District Court never reached the three immunity issues. The District Court stated, "Having found that Plaintiffs failed to establish that they were denied a federal right, the Court need not reach any of these [immunity] issues. *It notes, however, that all these defenses appear to be sound.*" Pet.App. 29, footnote 13. (emphasis added).

District Court Judge Carnes found it unnecessary to reach the immunity issues because of Petitioners' failure to allege and prove a cause of action. Petitioners failed to establish the violation of federal right. Despite Petitioners' arguments to the contrary, the District Court is again correct. The issues of sovereign, legislative, and qualified immunity remain viable. If the case were to be remanded, the issues of sovereign, legislative and qualified immunity must be decided by the District Court.

SUMMARY AND CONCLUSION

Petitioners have blatantly misrepresented the question of law before this Court. All citizens, regardless of race, have standing under 42 U.S.C. § 1982. The question of race is irrelevant. The controlling issue in granting standing under 42 U.S.C. § 1982 is the existence of a nexus or connection between an ownership interest in property and a violation of or discriminatory interference with that property right. No such nexus exists in the present case.

Petitioners have also misrepresented the decision of the U.S. District Court and the Eleventh Circuit Court of Appeals. Neither the District Court nor the Circuit Court of Appeals relied upon the issue of standing in denying Petitioners' claims. The District Court instead noted that, "Petitioners had not provided the court with any explanation of why they felt they had a cognizable 42 U.S.C. § 1982 claim." Pet.App. 32-34. Petitioners made no connection between the acts they alleged and a violation of the law. Their arguments failed. The Eleventh Circuit Court of Appeals upheld the District Court ruling. The decisions of both courts conform to *Sullivan v. Little Hunting Park, Inc.*

The standing argument now presented to this Court was never addressed by the District Court or the Court of

Appeals. Petitioners' writ of certiorari should be dismissed and all costs cast upon the Petitioners.

Respectfully submitted,

CARYL SUMNER BLACK
(neé Caryl Brinson Sumner)
CARYL SUMNER BLACK, P.C.
5015 Oak Bluff Court
Atlanta, Georgia 30350
(770) 390-0101

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EVA CHARLENE SARDONELL and DOUGLAS SARDONELL, Plaintiffs vs. GARY NORIEGA, individually, and as Council Member, City of Powder Springs, WAYNE WRIGHT, individually, and as City Manager, City of Powder Springs, RICHARD SAILORS, individually and as Mayor, City of Powder Springs, VINCE BLACKMON, individually, and as Code Compliance Officer and the CITY OF POWDER SPRINGS Defendants.	CIVIL ACTION FILE NO. 1:99-cv-1921

COMPLAINT

(Filed Jul. 27, 1999)

NOW INTO COURT, comes and appear Plaintiffs, EVA CHARLENE SARDONNELL and DOUGLAS SARDONELL, through undersigned counsel, George Melville Johnson & Associates, P.C. who hereby file this complaint for damages and declaratory relief against the above named defendants as follows:

I. PRELIMINARY STATEMENT

1.

Plaintiffs bring this action pursuant to the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*

(hereinafter referred to as the "Fair Housing Act"), 42 U.S.C. §§ 1981, 1982, 1983, and 1985.

II. PARTIES

2.

Plaintiffs are husband wife, are white citizens of the United States and residents of Cobb County, Georgia.

3.

Defendant, City of Powder Springs, is a municipality and political subdivision of the State of Georgia, which may be served through its City Manager, Wayne Wright, at 4488 Pineview Drive, Powder Springs, Georgia 30127 Gary Norega, is a member of the City Council for the City of Powder Springs and may be served at the same address through such City Manager. Wayne Wright is the City Manager and may be served accordingly. Richard Sailors is the mayor for the city of Powder Springs and may be served through the City Manager at the above referenced address, and Vince BLACKMON is the Code Compliance Officer for the City of Powder Springs and may be served at the same address through the City Manager.

III. JURISDICTION AND VENUE

4.

This action involves the constitutional right to due process and equal protection under the Fourteenth Amendment to the United States Constitution. It also arises out of the procedural and statutory rights and obligations secured and established by Title VII of the Civil Rights Act of 1968, 42 U.S.C. §3601 et seq., and 42 U.S.C. §§ 1981, 1982, 1983, and 1985.

5.

Jurisdiction of this Court is invoked pursuant to 28 USC 1331 and 1343(a)(3) and 1343(a)(4). The amount in controversy, exclusive of interest and costs, is in excess of $75,000.00. Declaratory relief is sought pursuant to 28 USC §§ 2201 and 2202. All of the acts, omissions, and events complained of herein took place in Cobb County, Georgia and venue is, therefore, proper in the Middle District for the United States District Court in Georgia.

IV. FACTUAL ALLEGATIONS

6.

Plaintiffs are white citizens of the United States residing in Powder Springs, Georgia. Doug Sardenell [sic] owns a home located at 3891 Blythewood Circle, Powder Springs, Georgia, and plaintiff, E. Charlene Sardonell owns a home located at 3890 Blythewood Circle, Powder Springs, Georgia.

7.

For the reasons set forth hereinafter, plaintiffs have, since September of 1998, suffered the deprivation of their constitutional rights to due process and to equal protection under the law.

8.

Additionally, plaintiffs have been harassed and subjected to arbitrary and unfounded charges filed against them by the City of Powder Springs, through Vince BLACKMON and pursuant to directions from Wayne Wright and Richard Sailors.

9.

Since October of 1995, Douglas Sardonell has been in possession of a Home Based Operations License issued by the City of Powder Springs and, up until September of 1998, Sardonell was able to operate a business out of his residence without interference from the defendants.

10.

In September, 1998, plaintiff E. Charlene Sardonell rented her residence to non-white citizens of the United States pursuant to Section 8 of the United States Department of Agriculture Housing Program.

11.

Prior to the effective date of the tenancy of these non-white lessess [sic], the neighbor of the plaintiffs and the mother-in-law of defendant, Gary Noriega, approached E. Charlene Sardonell and requested that she refrain for

renting her residence to any non white individuals and further stated that she could assist her in finding legal mechanisms to avoid renting to any such individuals.

12.

Upon Plaintiffs' information and belief, defendant Gary Noriega, acting under color of state law, conspired to harass and intimidate Plaintiffs into terminating their rental relationship with their non-white tenants by suddenly and without provocation or a sound basis, causing the arbitrary investigation, charging, and prosecution [sic] the plaintiff for violations of the City's zoning ordinances.

13.

Upon plaintiffs' information and belief, decedents, Wayne Wright and Richard Sailors acted under color of state law, and in concert and conspiracy with Gary Noriega in subjecting the plaintiffs to on site inspections and warnings given by City Code officials for alleged and unfounded city code violations beginning in November of 1998.

14.

Plaintiffs continued to be harassed by the unfounded and selective enforcement of officials with the City of Powder Springs by virtue of a letter issued by the City on January 25, 1999, wherein the City accused the plaintiffs of violating Doug-Sardonell's Customary Home Occupation License by the parking of their vehicles at his residence and by virtue of numerous deliveries to the residence.

15.

Plaintiffs assert that no such numerous deliveries had taken place, that no more vehicles were parked at their residence than in prior years, and that the City's sudden attempts to enforce the City's zoning code came at the direction of Defendants, Gary Noriega, Wayne Wright, and Richard Sailors, in an attempt to intimidate and harass the Plaintiffs as a result of their exercise of their home to any individual without regard to race.

16.

As a continuation of such pattern of the Defendants' intimidation, coercion, and harassment, plaintiffs were subjected to another inspection by a city zoning commission member, who stated that he did not see any code violations at their residence.

17.

As yet another part of the continuation of the defendants intimidation, coercion, and harassment of the plaintiffs, several City Council members stated in the March, 1999 City Council Meeting that the Plaintiffs' nephew could not visit their home if he drove a vehicle owned by Doug Sardonell.

18.

As still further continuation of the Defendants' acts of intimation, coercion, and harassment of the Plaintiffs, on April 16, 1999, E. Charlene Sardonell was issued a citation for violation of the City's zoning ordinances.

19.

Plaintiffs show further that they applied for a land use permit to avoid being cited for any zoning violations prior to such citation being issued and that the City of Powder Springs, in violation of their right to due process and equal protections of the law, failed to act on such permit application in violation of city Ordinances.

COUNT I

FAIR HOUSING ACT CLAIM

20.

All of the allegations contained in this Complaint and in paragraphs 1 through 19 are made a part hereto by reference and incorporated herein, as if fully set forth herein.

21.

The conduct of the Defendants constitute [sic] a violation of the [sic] 42 U.S.C. § 3604 in that defendants acted in concert and under color of state law to conspire to deny the plaintiffs the right to rent their residence to individuals without regard to race.

COUNT II

42 U.S.C. § 1983 CLAIM

22.

All of the allegations contained in this Complaint and in paragraphs 1 through 21 are made a part hereto by reference and incorporated herein, as if fully set forth herein.

23.

The conduct of the defendants are actionable under 42 USC § 1983 as a violation of the Plaintiffs' right to equal protection under the laws and substantive due process, as well as their right not to be deprived of property rights without procedural due process of law.

COUNT III

42 USC § 1981 CLAIM

24.

All of the allegations contained in this Complaint and in paragraphs 1 through 23 are made a part hereto by reference and incorporated herein, as if fully set forth herein.

25.

The conduct of the defendants are actionable under 42 USC § 1981 as a violation of the plaintiffs' right to equal protection under the laws and their right to make and enforce contracts without regard to race.

COUNT IV

42 U.S.C. § 1982

26.

All of the allegations contained in this Complaint and in paragraphs 1 through 25 are made a part hereto by reference and incorporated herein, as if fully set forth herein.

27.

The conduct of the defendants are actionable under 42 U.S.C. § 1982 as a violation of the plaintiffs' rights to equal protection under the laws and their right to buy, sell, or lease property without regard to race.

COUNT V

42 U.S.C. § 1985

28.

All of the allegations contained in this Complaint and in paragraphs 1 through 27 are made a part hereto by reference and incorporated herein, as if fully set forth herein.

29.

The conduct of the defendants in conspiring to deprive the plaintiffs of their constitutional rights to equal protection and due process of law constitute a violation of the plaintiffs' rights in violation of 42 USC § 1985.

WHEREFORE, Plaintiffs pray that this Honorable Court grant the following:

1. Declare that the actions of the defendants are unconstitutional and contrary to the laws of the United States of America;

2. Enjoin defendant, the City of Powder Springs, its officials, and employees and agents from exercising its police powers in such a way as to discriminate on the basis of race and that violate the plaintiffs' right to due process and equal protection of law;

3. General damages of $500,000.00;

4. Punitive damages of $500,000.00;

5. Attorneys fees and costs;

6. Trial by jury; and

7. Such other just and equitable relief as may be necessary Respectfully submitted this 23rd day of July 1999.

GEORGE MELVILLE JOHNSON
AND ASSOCIATES, P.C.
/s/ George Melville Johnson
George Melville Johnson
Georgia Bar No. 393505
Attorneys for Plaintiff

Suite 803, The Grant Building
44 Broad Street, N.W.,
Atlanta, Georgia 30303
(404) 524-9111
Fax – 404-524-6611

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EVA CHARLENE SARDONELL and DOUGLAS SARDONELL, Plaintiffs, v. GARY NORIEGA, individually, and as a Council Member, City of Powder Springs, WAYNE WRIGHT, individually, and as City Manager, City of Powder Springs, RICHARD SAILORS, individually and as Mayor, City of Powder Springs, VINCE BLACKMON, individually, and as Code Compliance Officer, and the CITY OF POWDER SPRINGS, Defendants	CIVIL ACTION FILE NO. 1:99-CV-1921-JEC App 2 March Minutes

THIRD AFFIDAVIT OF BETTY BRADY

PERSONALLY appeared before me, an officer duly authorized to administer oaths, Betty Brady, who, being duly sworn, deposes and states as follows:

1.

My name is Betty Brady. I am over the age of eighteen and competent to make this Affidavit.

2.

I serve as City Clerk for the City of Powder Springs. In that capacity, I am responsible for keeping the official records for the City.

3.

I take the minutes for the City Council meetings.

4.

The attached copy of the minutes of the Powder Springs City Council Meeting of March 1, 1999 is a true and accurate copy of the original which is maintained as an official record of the City.

5.

Further Affiant saith nought.

Respectfully submitted this 8th day of December, 2000.

/s/ Betty Brady
BETTY BRADY

Sworn to before me this
8th day of December, 2000.

/s/ Catherine Raper
Notary Public

Notary Public, Paulding
County, Georgia
My Commission Expires
Jan. 29, 2001

REGULAR CITY COUNCIL MEETING
CITY OF POWDER SPRINGS
MARCH 1, 1999

Mayor Sailors called the meeting to order at 7:00 PM. All members of Council were present. Also present were City Attorney Dale Bandy, City Manager Wayne Wright, and City Clerk Betty Brady.

Invocation: Wayne Wright. The Pledge of Allegiance to the Flag was led by Mayor Sailors.

The February 15, 1999 regular City Council meeting minutes were approved as presented.

MAYOR'S COMMENTS:

- Stated he and Councilman Gary Noriega attended a cluster meeting with various area school principals on Tuesday, February 23. The meeting was concerning transition of students to middle schools and high schools.
- Presented, to Lloyd Cargal, Director of Finance, a check in the amount of $126,129.17, for franchise fees, and a check in the amount of $6,126.34, for property tax, to the city of Powder Springs from Georgia Power.
- Recognized Bobby C. Elliott, Public Works Director, for 25 years of service with the City of Powder Springs. Bobby began work with the city on 2/21/74 as a part time employee and became fulltime on 3/1/74. Bobby became Public Works Director on 1/28/75. Mayor Sailors read a letter from Governor Roy E. Barnes, commending Bobby for his years of service with the City. Mayor Salors presented Bobby with a plaque and with the assistance of Council

Members Sid Baxter, George Ford, Brad Hulsey, Gary Noriega, and Pat Vaughn, presented Bobby with a 31" television. Following the gift presentation, a reception was given in Bobby's honor.

CITIZEN'S COMMENTS:

Judith Skelton, 3200 Dogwood Drive, was present and stated her concerns about the trees planted in the buffer for the Eckerd Drug Store that have died. She also stated that there is a water problem in her yard. She stated she believes it is coming from the vacant lot that belongs to the City. Ms. Skelton also stated her concerns about the lighting on the Eckerd Drug Store. Although some modifications were made, the lights are still too bright.

Brad Hulsey stated he has received complaints from the Spring Crossing Homeowners Association about the lighting at the Eckerd Drug Store.

Mayor Sailors stated a letter will be sent to Venture about the lighting on the store needs to be changed and also to inform them that the time to plant the trees has ended.

CITY ATTORNEY:

Dale Bandy presented a Land Use Permit application, and opened the public hearing, for Douglas Sardonell, 3891 Blythewood Circle, for the purpose of the home occupation business, "A Cool Flame Heating and Air, Inc." The permit would be to allow continuation of an existing home business. Mr. and Mrs. Sardonell were present and stated that their business will be moving to a commercial location on April 1, 1999. The Planning Commission voted 3 for the application and 3 against approval of the application. No

one signed up to speak concerning the application. There were three neighbors present in favor of the application. The public hearing was closed.

GARY NORIEGA moved to continue the application until the first meeting in April. This would also allow Mr. Sardonell to have the two vans on his property until the first meeting in April. *GEORGE FORD* seconded. The voted was 5 to 0 to table until the first meeting in April.

Dale Bandy presented a Rezoning application, and opened the public hearing, for G W Investments, for property located near Florence Road and Lawler Drive. The request is to obtain a CRC (Community Retail Commercial) zoning, from LI (Light Industrial) for the purpose of a restaurant, retail, or banking facility. No one signed up to speak concerning the application. The Planning Commission recommended approval. Mr. Lynn Wilson was present to speak for the application. Mr. Wilson stated that he plans a strip shopping area on the property. *BRAD HULSEY* moved to approve. *SID BAXTER* seconded. *APPROVED 5 TO 0.*

Dale Bandy stated the Option Agreement and Natural Resource Conservation Easement (Resolution 99-3) between the City of Powder Springs and Wetlands Environmental Technologies is not completely ready for review and cannot be voted on tonight.

Dale Bandy stated the agreement for solid waste disposal services between the City of Powder Springs and Cobb County (Bedminster Contract) (Resolution 99-4) has not been completely negotiated and cannot be voted on tonight.

Dale Bandy presented the second reading of *ORDINANCE 99-1*, to amend FY 1998-99 Budget. *GEORGE FORD* moved to approve. *SID BAXTER* seconded. *APPROVED 5 TO 0.*

COUNCIL REPORTS:

Gary Noriega congratulated Bobby Elliott for his 25 years of service with the City of Powder Springs. He also commented on the cluster meeting with area school principals last Tuesday, February 23.

Pat Vaughn congratulated Bobby Elliott for his 25 years of service with the City of Powder Springs and stated that it has been a pleasure to work with him the past five years. Mrs. Vaughn also commended Bobby for being on the Dean's list while at Southern Tech.

George Ford congratulated Bobby Elliott for his 25 years of service with the City of Powder Springs.

Brad Hulsey congratulated Bobby Elliott for his 25 years of service with the City of Powder Springs. Mr. Hulsey also extended congratulations to Robin, Bobby's wife.

Mr. Hulsey announced the McEachern High School football team, cheerleaders, and the band will attend the March 15 council meeting.

Mr. Hulsey moved to re-appoint Steve Thomas and Rick Gravitt to the Planning & Zoning Commission, term to expire 3/16/01. *GEORGE FORD* seconded. *APPROVED 5 TO 0.*

Sid Baxter congratulated Bobby Elliott for his 25 years of service with the City of Powder Springs. Mr. Baxter also

announced the Keep Powder Springs Beautiful Committee will meet Saturday, March 13 at the Ford Center to move shrubbery and asked for anyone wishing to help to meet them there.

Wayne Wright, City Manager, extended his congratulations to Bobby Elliott and stated his administration to him for not being afraid to tackle any task.

Betty Brady, City Clerk, extended her congratulations to Bobby Elliott.

Rick Richardson, Chief of Police, extended his congratulations to Bobby Elliott.

Lloyd Cargal, Director of Finance, extended his congratulations to Bobby Elliott.

The meeting adjourned at 8:40 PM.

/s/ Betty G. Brady
Betty G. Brady
City Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EVA CHARLENE SARDONELL and DOUGLAS SARDONELL,	]
Plaintiffs	] CIVIL ACTION FILE] NO. 1:99-CV-1921-JEC
v.	]
GARY NORIEGA, individually, and as a Council Member, City of Powder Springs, WAYNE WRIGHT, individually, and as City Manager, City of Powder Springs, RICHARD SAILORS, individually and as Mayor, City of Powder Springs, VINCE BLACKMON, individually, and as Code Compliance Officer, and the CITY OF POWDER SPRINGS,	]]]]]]]]]]]]
Defendants.	]

AFFIDAVIT OF BETTY BRADY

PERSONALLY appeared before me, an officer duly authorized to administer oaths, Betty Brady, who, being duly sworn, deposes and states as follows:

1.

My name is Betty Brady. I am over the age of eighteen and competent to make this Affidavit.

2.

I serve as City Clerk for the City of Powder Springs. In that capacity, I am responsible for keeping the official records for the City.

3.

I take the minutes for the City Council meetings.

4.

I keep the official audio tapes of the City Council meetings.

5.

I listened to that portion of the audio tape of the March 1, 1999 City Council meeting dealing with the issues involved in the above referenced case. I completed a transcription of that portion of the tape. A copy of my transcription is attached as Exhibit A to this Affidavit.

6.

To the best of my knowledge, the transcription attached hereto as Exhibit A is true and correct.

7.

I have also attached to this Affidavit the audio tape from which I made this transcription.

8.

Further Affiant saith nought.

Respectfully submitted this 8th day of December, 2000.

Sworn to before me this 8th day of December, 2000.

/s/ Betty Brady
BETTY BRADY

/s/ Catherine Raper
NOTARY PUBLIC

Notary Public, Paulding
County, Georgia
My Commission Expires
Jan. 29, 2001

EXHIBIT A

TRANSCRIPTION FROM CITY OF POWDER SPRINGS CITY COUNCIL MEETING 3/1/99 CASSETTE TAPE

MS. BANDY: The first item on our agenda is the public hearing for land use permit application of Mr. Douglas Sardonell, 3891 Blythewood Circle has requested a land use permit to operate heating and air-conditioning office, I believe, from the home. Come forward please.

MS. SARDONELL: To start with, we don [sic] still need a temporary land use permit. We have located and will be moving into a commercial place April first. It should be ready, but again we still need a land use permit until that time. And it's going to be at 4018 Lindley Road, Powder Springs, Georgia, Suite B.

And then that's going to bring up another issue because when we move I need to know what to do about our business license. As

MAYOR SAILORS: Let me ask you this, Ms. Sardonell, am I hearing you say that you are withdrawing or want to withdraw your application.

MS. SARDONELL: No sir, I'm not withdrawing because even though we are moving to a commercial location, we can't do that until April first, and we really don't need to [sic] getting letters and phone calls for the next thirty days.

COUNCIL MEMBER GEORGE FORD: We could postpone this for thirty days.

MR. SARDONELL: No, we want the harassment stopped because we have been harassed with deliveries which we have proven here that we do not get the deliveries in excess. There's somebody in the neightorhood [sic] that is –

MS. SARDONELL: We obviously bother.

MR. SARDONELL: – we are bothering, we need to have them stop bothering us because we don't bother anybody.

COUNCIL MEMBER GEORGE FORD: Right.

COUNCIL MEMBER BRAD HULSEY: Well –

COUNCIL MEMBER GEORGE FORD: We understand you here but nevertheless if we issue a land use permit for that particular property, then, you know?

COUNCIL MEMBER BRAD HULSEY: It's again – I'll go back –

COUNCIL MEMBER GEORGE FORD: It'll mess up their property.

COUNCIL MEMBER BRAD HULSEY: You all currently have, and for the people who don't understand, you all currently have a customary home occupation license that the City granted to you.

MS. SARDONELL: Right.

COUNCIL MEMBER GEORGE FORD: Right.

MS. SARDONELL: And three of our neighbors are here that can speak on our behalf that we do not disturb people.

COUNCIL MEMBER BRAD HULSEY: Sure.

MS. SARDONELL: And, of course, Councilman Noriega is a neighbor and he can't see our house, so I don't really count you, I'm sorry, but –

COUNCIL MEMBER BRAD HULSEY: And I understand that, but – and I'm not arguing that yea or nay. Okay? I haven't had anyone contact me, per se, but still we have the issue of the customary home occupation license that calls for certain criteria that you all meet.

MS. SARDONELL: Right.

COUNCIL MEMBER BRAD HULSEY: That's why we are at this point because you all do not meet the criteria of the customary home occupation license. The license says that you can only park one vehicle pertaining to the business –

MS. SARDONELL: Right.

COUNCIL MEMBER BRAD HULSEY: on your premises and you all have been parking two. The reason why – because you have an opening.

MS. SARDONELL: Right.

COUNCIL MEMBER BRAD HULSEY: And that's your van that you own for your business and you want to keep it there. That's the reason that you all have given us.

Also, and I guess that it is open for discussion, as to what congregating is, but the other issue, that I saw, was that we know is a fact, that your employees have been coming there – the word actually that is used is congregating. And, of course, we could debate that, I guess, but – what congregating means. But, because your employees have been there, at times, to pick up work orders and at times to pick up their paychecks, the under [sic] the customary home occupation, then that would be considered potentially congregating on the premises.

You have assured us at the agenda session that you would meet the congregating issue but still you cannot assure us that – that you would meet the stipulation of only one commercial vehicle.

MS. SARDONELL: Right.

COUNCIL MEMBER BRAD HULSEY: And my question would be to you is we've got thirty-one days here. Could you not meet that criteria and us not go through this process of a land use permit.

MS. SARDONELL: No. Because we still haven't gotten another technician so we're still going to have the two vans which means someone is going to continue complaining.

COUNCIL MEMBER BRAD HULSEY: Is there no way that you could move that vehicle to another location for one month?

MS. SARDONELL: No, because it could get vandalized, it could be stolen, it could – things could be stolen off of it and we just don't feel that we should have to be put in that position for thirty days either.

MR. SARDONELL: Each day I have invested twenty-five to thirty thousand dollars on each van, even though I give the instance of the estimate there, for stuff that's retained on those vehicles. It is an expensive business to be in.

COUNCIL MEMBER BRAD HULSEY: I understand that.

MS. SARDONELL: So rather than do that, we have made arrangements for a commercial location. I have the letter from the City. We've already shown that the numerous deliveries is false allegations.

COUNCIL MEMBER BRAD HULSEY: Well, I mean, I said that's neither here nor there.

MS. SARDONELL: Yeah, I know, I realize that.

COUNCIL MEMBER BRAD HULSEY: I was giving you the two situations that you had, that you are required to come to us to ask for a land use permit, that we know of.

MS. SARDONELL: Yeah. Our employees – that issue is already been being addressed.

COUNCIL MEMBER BRAD HULSEY: Right, you had told us that.

MS. SARDONELL: So it is just a matter of the van and we again we have no more vehicles now than he has ever had at that house. He has always since '87 had two vans and his motorcycles there.

COUNCIL MEMBER BRAD HULSEY: But, but, I understand that, and, and be that as it may – and, of course, I'm here to argue with you but, but under the customary home occupation license, it explicitly says in there that if vehicles pertaining to the business under which the customary home occupation license was given, then you have to have only one vehicle.

MS. SARDONELL: Right.

COUNCIL MEMBER BRAD HULSEY: At that time in 1987, you didn't have a customary home occupation where you were parking the vehicles.

MS. SARDONELL: So that's why we applied for the la l use permit because it says if we can't meet the strict interpretation of that section, we can apply for a land use permit –

COUNCIL MEMBER BRAD HULSEY: Right.

MS. SARDONELL: and that's what we've done. You know, we are not asking to put a parking lot there – and I did send letters to all of the neighbors asking them to join us tonight with objections, suggestions, or support. Three of them are here. And I only sent them again to the

neighbors that can see our home. I didn't send them to the people down the street, around the curve, and wherever else – and you already got a copy of the petition and I guess that would be all.

MS. BANDY: No one has signed up to speak either in favor of or in opposition to this application. But, if there is anyone here that would like to be recognized, just by show of hands, as being in opposition.

MAYOR SAILORS: There are three.

MS. BANDY: Or in favor of. In opposition of? Or in favor of this application?

MAYOR SAILORS: You have three.

COUNCIL MEMBER PATRICIA VAUGHN: Are you asking for this for just a month?

MS. SARDONELL: Yes, ma'am. Because we still for that one month we are not going to be able to comply and we really don't need to keep getting letters and being concerned about whether or not we are going to be getting tickets or cited or whatever.

MAYOR SAILORS: You know, it goes back to what we've talked about on Wednesday evening. And I'll be very frank and very candid. I wish that we did not allow land use permits in our City. It doesn't do anything to enhance the residential neighborhoods and it creates traffic, it creates a lot of problems. However, with that said, we have issued quite a few and you mentioned some the other night – daycare, piano teacher, maybe a computer in-home operation, but, our neighborhoods are our neighborhoods and people bought houses to live there. They didn't buy those houses in a commercial setting or an

industrial setting, they both [sic] them in a residential setting. And, again we have – I think we have been very lenient, our planning commission as well as this elected council in granting several throughout the years. But that's not to say that it was the right thing to do. As I told you the other night, and I'll tell your husband, I don't have a problem and I don't think our council had a problem. I don't think the Planning & Zoning probably had a problem with your home office being there and that, in itself saves you as a small business person a lot of dollars by having that office in your home. But then when it gets to the point of trucks in and out, personnel in and out, that's taking away from the residential neighborhood. And we have a compliance officer coming on board the first of April. This was a goal that this council has had now for some time and our police department doesn't have the manpower to do it. Our building inspector doesn't have the manpower to do it, but we are going to tighten up on violations, code violations. Hopefully, we'll be doing this on a regular basis come April one.

But, I would be willing to entertain a motion from the council. I don't know if we can do this. Ms. Bandy, you correct me if I'm wrong. If we could issue you a thirty-day temporary van parking permit, if council would go along – I would entertain a motion for that. But, to issue a land use permit for what you [sic] application says –

COUNCIL MEMBER GARY NORIEGA: May I say something, Mayor?

MAYOR SAILORS: Yes.

COUNCIL MEMBER GARY NORIEGA: That, that thought has crossed my mind, Ms. Sardonell, this evening, but, and Mr. Sardonell, but I've got to be quite

frank with you also. All right, I wonder, even though I'm entertaining the thought of a temporary land use permit, help me to understand why in the next thirty days you two couldn't work within the parameters of the permit that you already have. I mean, you're asking me to do this and the thought has crossed my mind, but also I guess I'm just a little frustrated cause, I'm thinking, if you could do this on your end, we wouldn't have to go through this.

MR. SARDONELL: We are doing this stuff, sir. We have –

MS. SARDONELL: We've already –

MR. SARDONELL: We have a –

MS. SARDONELL: got a commercial location.

MR. SARDONELL: We have agreed to a commercial location. So I think we have made every honest attempt and gone above and beyond in doing it.

MAYOR SAILORS: Will you have a secured area to park the trucks?

MS. SARDONELL: Yes, sir.

MAYOR SAILORS: In the space that you're renting?

MS. SARDONELL: Yes, sir. It is – there is a fence around the area. It's back behind Kentucky Fried Chicken.

MAYOR SAILORS: Well, in all fairness.

MR. SARDONELL: I mean, like Sharon Drive has two eighteen-wheelers right down the road down here. We are not asking for eighteen-wheelers. We just have a

simple van that I have had since I've moved in at this place.

MS. SARDONELL: And our customers do not come to our home. Our employees are not in and out. Our employees do drive our vehicles – they've been going straight to job site in the mornings, they don't come over.

MAYOR SAILORS: Let me address Mr. Sardonnell's comment there. The old saying is the squeaky wheel gets the grease and that's pretty true. But come April one, when this code enforcement officer is on board, that's going to be his primary duty is to be out and, and not trying to haggle people, but if there are code violations, he'll be out addressing them. He'll be citing those people. He'll be bringing them into court and some of those that maybe the – hadn't required the squeaky wheel and hadn't got to that point, they'll be addressed in the meantime.

So we know that there violations out there. There are a lot of people that have business that we know nothing about. They haven't came down and went through the process. But, you know, there's nothing you can do about that.

MS. SARDONELL: Can – well like, you know –

COUNCIL MEMBER SID BAXTER: I would like to answer his other question, too, the one about the trucks on Sharon Drive.

MR. SARDONELL: There are two eighteen-wheelers with the trailers.

COUNCIL MEMBER SID BAXTER: That is both where they park them is commercial area.

MR. SARDONELL: In the residential –?

COUNCIL MEMBER SID BAXTER: At the end of that road where they park them is commercial.

MR. SARDONELL: Not the end, we are talking right next to his – one is in his backyard and one right in front of his home.

COUNCIL MEMBER SID BAXTER: Well it's about three houses on the left-hand side there and that's where he's been parking and that is commercial.

MR. SARDONELL: Commercial? Looks like it's residential, all right.

MS. SARDONELL: Can, I address something else?

MR. SARDONELL: I'll move the van. I'll take it and get it out.

MS. SARDONELL: No, I don't think so, wait. I want, can I address something else?

MAYOR SAILORS: Two wrongs don't make a right, so, you know, that's a, that's another problem.

MS. SARDONELL: You mentioned the other night about having a junkyard, Mr. Noriega, I think can speak hopefully on this part. When you look out toward Lancer, I know from my car porch, I see a lot of junk. Our yard does not look like that. Those people don't have the business, so how – yet their [sic] not bothered and I know that's against codes, what I see when I look toward Lancer.

COUNCIL MEMBER GEORGE FORD: That's why we're getting another code enforcement officer.

MS. SARDONELL: Yeah.

COUNCIL MEMBER GEORGE FORD: We can't take care of what we've got.

COUNCIL MEMBER BRAD HULSEY: We are slowly but surely addressing these problems. Some in the very area you are talking about. We are just not able to get to them all right now.

MS. SARDONELL: Yeah.

MAYOR SAILORS: That's exactly right.

COUNCIL MEMBER BRAD HULSEY: When we get the – this compliance officer in, we hope that that's going to curtail these situations and we are going to address them.

MS. SARDONELL: I would still like to ask for a thirty-day temporary, either a van parking permit, as you said or a land use permit either – whatever you want to call it is fine. Simply because for the next thirty days – we were told today April first we should be able to move into this location.

COUNCIL MEMBER GEORGE FORD: Well, I don't see why we can't just give you permission to use what you have right now for thirty days.

MS. SARDONELL: Well, that's what we'd like to do and just be able to keep our vans there. And, by the way, we are interviewing somebody else this Saturday.

COUNCIL MEMBER SID BAXTER: What if you can't move in April first, then you are stuck with this van.

MR. SARDONELL: We'll move the van because we are going to move to this property by April first.

MS. SARDONELL: Yeah, because he's actually got to make provisions for the vehicles. He's – that's one of the things he is doing.

COUNCIL MEMBER SID BAXTER: I would think you would want to get an extra few days just in case you didn't get in, but –

MAYOR SAILORS: I think that what they are asking for is reasonable because I think on Wednesday when we discussed this, I believe Councilman Hulsey made a suggestion and I believe you followed up on that as far as getting some property to park the vehicles – well, you've took it a step further, you got a location for a commercial location.

MS. SARDONELL: Yeah.

MAYOR SAILORS: Could, could we issue a temporary permit?

MS. BUNDY: Under the – let me check the code, Mr. Mayor, if you'll give me a minute.

MAYOR SAILORS: Okay. And it wouldn't necessarily have to be a temporary permit. What I'm hearing from these people tonight is come April first, which is one month from today, they're going to be relocated in a commercial setting. The vans will not be parked

in the residential setting. So, you know, I think – I don't think thirty days is unreasonable to

MS. SARDONELL: The one van that he drives will still be there. It is just the one van he drives.

MAYOR SAILORS: One vehicle?

COUNCIL MEMBER BRAD HULSEY: Then when they move their, I mean, it will be fine once they move their commercial – so come April first if we grant some type of temporary license or parking permit or whatever, then after April first, then what happens to their customary home occupation license?

MR. SARDONELL: Well, we'll no longer, that'd be transferred, that's what we've got to get squared away with the City. We have got to get the –

MS. SARDONELL: What do we do to transfer our business license or do we apply for a new one or what do we need to do?

MAYOR SAILORS: Are you going to move your office there also?

MR. SARDONELL: Yeah, our office will be there.

MAYOR SAILORS: Okay.

MAYOR SAILORS: Well, it's like Coach says, under your existing customary home occupation permit, is that still good through – is it still good?

COUNCIL MEMBER GEORGE FORD: Yeah.

MAYOR SAILORS: And they have a current business license. Okay, so really what we're talking about doing –

COUNCIL MEMBER BRAD HULSEY: is the van.

MAYOR SAILORS: is giving them a temporary permit for thirty days to park that van?

CITY MANAGER WAYNE WRIGHT: I've got a suggestion.

MAYOR SAILORS: Okay.

CITY MANAGER WAYNE WRIGHT: You could simply continue the consideration of the case for thirty days and at which time, if everything is fine, you dismiss the case and

MAYOR SAILORS: That's what Coach suggested.

MS. SARDONELL: Coach Ford suggested that.

CITY MANAGER WAYNE WRIGHT: If it's not fine, you take action on it – deny it or whatever and then the City will take the appropriate enforcement action as a result of the Council's action.

MS. SARDONELL: Now, are you going to keep writing me letters? Actually is Mr. Blackmon going to write me some more letters?

MR. SARDONELL: I already have two other vehicles that I already keep off the premises. I've got four vehicles on-line and I already keep the other two, we're

just having a problem with one until I get another gentlemen in there.

MAYOR SAILORS: Well it sounds to me like you folks are trying to do what is right. And I wouldn't – you know –

COUNCIL MEMBER GEORGE FORD: Just give them thirty days.

COUNCIL MEMBER BRAD HULSEY: Can we just table it?

MAYOR SAILORS: Coach suggested this from the, when we came back in here that we postpone this for thirty days and Mr. Blackmon can be instructed that you are allowed two vans there for the next thirty days. Gary, can you live with that?

COUNCIL MEMBER GARY NORIEGA: Yes, sir.

MAYOR SAILORS: And, and then you come back here or if you get moved – what's our first council meeting in April? April fifth. If you are in your new location by April fifth, call Mr. Wright and say we are withdrawing our request and that'll be the end of it.

MS. SARDONELL: Okay.

MAYOR SAILORS: Okay? Can ya'll live with that.

COUNCIL MEMBER BRAD HULSEY: Yes, sir.

COUNCIL MEMBER GARY NORIEGA: Yes, sir.

COUNCIL MEMBER GEORGE FORD: Yes, sir.

MS. BANDY: We'll need a motion and a vote, too.

MAYOR SAILORS: All right, we need a motion to do this and a vote.

COUNCIL MEMBER GARY NORIEGA: I'll make the motion.

COUNCIL MEMBER GEORGE FORD: I'll second it.

MAYOR SAILORS: We have a motion and a second to continue this request until the first meeting in April. All in favor with the uplifted hand. Okay.

MS. SARDONELL: Okay.

MAYOR SAILORS: I want to – let me say this on behalf of our council and myself, our agenda sessions are open to the public and you came down last Wednesday and you were here and we talked. I appreciate the efforts on your behalf to live with the ordinances and it may be not financially feasible at this time, but I do, when I say I wish we didn't have any at all, I mean that sincerely. But I appreciate what you are doing to get your business in a commercial setting.

MS. SARDONELL: Actually, we had already been looking before all this started. And the person we are renting from, when I mentioned it to him, is he said why don't I rent you a place.

COUNCIL MEMBER GARY NORIEGA: Thank you both.

MAYOR SAILORS: Thank you. And like I said, if you get this thing settled before this council meeting, just let Mr. Wright know and we'll withdraw the request.

MS. SARDONELL: Now, do we need to apply for another business license in the commercial location?

COUNCIL MEMBER SID BAXTER: All you have to do is a change of address.

MAYOR SAILORS: Change of address, I would imagine.

COUNCIL MEMBER GEORGE FORD: Just transfer.

MAYOR SAILORS: See Mrs. Raper.

MS. SARDONELL: Okay.

MAYOR SAILORS: Thank you.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EVA CHARLENE SARDONELL and DOUGLAS SARDONELL, Plaintiffs v. GARY NORIEGA, individually, and as a Council Member, City of Powder Springs, WAYNE WRIGHT, individually, and as City Manager, City of Powder Springs, RICHARD SAILORS, individually and as Mayor, City of Powder Springs, VINCE BLACKMON, individually, and as Code Compliance Officer, and the CITY OF POWDER SPRINGS, Defendants.	CIVIL ACTION FILE NO. 1:99-CV-1921-JEC

FOURTH AFFIDAVIT OF BETTY BRADY

PERSONALLY appeared before me, an officer duly authorized to administer oaths, Betty Brady, who, being duly sworn, deposes and states as follows:

1.

My name is Betty Brady. I am over the age of eighteen and competent to make this Affidavit.

2.

I serve as City Clerk for the City of Powder Springs. In that capacity, I am responsible for keeping the official records for the City.

3.

I take the minutes for the City Council meetings.

4.

The attached copy of the minutes of the Powder Springs City Council Meeting of April 5, 1999 is a true and accurate copy of the original which is maintained as an official record of the City.

5.

Further affiant saith nought.

Respectfully submitted this 8th day of December, 2000.

/s/ Betty Brady
BETTY BRADY

Sworn to before me this 8th
day of December, 2000.

/s/ Catherine Raper
Notary Public
Notary Public, Paulding County, Georgia
My Commission Expires Jan. 29, 2001

REGULAR CITY COUNCIL MEETING
CITY OF POWDER SPRINGS
APRIL 5, 1999

Mayor Sailors called the meeting to order at 7:00 P.M. All members of City Council were present with the exception of Gary Noriega, who was away on vacation. Also present were City Attorney Dale Bandy, City Manager Wayne Wright, and City Clerk Betty Brady.

Invocation: Wayne Wright. The Pledge of Allegiance to the Flag was led by Mayor Sailors.

The March 15, 1999 regular Council meeting minutes were approved as presented.

MAYOR'S COMMENTS:

- Announced April 19-April 23, 1999 will be Reside with Pride Week.
- Announced Grady Grier Drive was striped this past Friday and commended Bobby Elliott, Public Works Director for having the striping done.
- Announced the Ward I meeting will be April 15th; Ward II meeting will be April 22nd; and Ward III meeting will be May 20th from 7:00 PM to 9:00 PM. These meetings will be at City Hall.
- Announced the 6th Annual National Day of Prayer at City Hall will be Thursday, May 6, 1999; from 12 Noon to 1:00 PM.
- City Attorney Dale Bandy the National Crime Victims' Rights Week (4/25/99-5/1/99) Proclamation.
- Announced the recent Mayor and City Council retreat, held at Timber Ridge Conference Center in Mableton, was successful.

Sergeant Bill Greene introduced Patrol Officers Russell Davis and Matt Boyd as new employees with the City of Powder Springs Police Department.

CITIZEN'S COMMENTS:

None

CITY ATTORNEY:

Dale Bandy presented a rezoning application, and opened the public hearing for Mitchell Morris, Finch Road. The request is to change the zoning from R-80 to PUD (Planned Unit Development). Ms. Bandy stated a letter of withdrawal was received by the City. Reed Konigsmark was present and requested a two week postponement. BRAD HULSEY moved to postpone the application until April 19th. SID BAXTER seconded. The application was postponed by a VOTE OF 4 TO 0.

PAT VAUGHN moved to postpone the second reading of ORDINANCE 99-2 until April 19th. BRAD HULSEY seconded. The second reading of Ordinance 99-2 was postponed by a VOTE OF 4 TO 0.

James R. Story, Story Road, inquired as to the status of the development.

Mayor Sailors stated the houses are to be a minimum of 2,000 sq ft; the plat will be re-drawn for no curb cuts off Finch road except the entrance to the subdivision; and all houses will have masonry fronts.

Dale Bandy presented a rezoning application, and opened the public hearing, for Kerry L. and Nancy J. Cobb, 3830 New Macland Road. The request is to change the zoning from R-15 to CRC (Community Retail Commercial). Mr.

Cobb was present and requested to change his request from R-15 to CRC to R-15 to O&I (Office & Institutional). No one signed up to speak for or against the application. BRAD HULSEY moved to approve with the two following stipulations: (1) parking will be in the rear of the building; and (2) the final site plan will be approved by the Mayor and City Council. PAT VAUGHN seconded. APPROVED 4 TO 0.

Dale Bandy presented a variance application, and opened the public hearing, for Whittemore Homes, Inc., (Phase 3 of Hopeland Park Subdivision) off Shipp Road. The request is to obtain a variance from the sidewalk requirement as required by the City of Powder Springs Planned Unit Development district ordinance. Mr. Whittemore was present and stated the request is to be in uniformity with Phases 1 and 2. No one signed up to speak for or against the application. The Planning Commission recommended denial of the application. BRAD HULSEY moved to deny the application. SID BAXTER seconded. DENIED 4 TO 0.

Dale Bandy presented a rezoning application, and opened the public hearing, for Hawks Development (Thornton Associates), located off Lewis Road (16.705 acres). The request is to rezone from LI (Light Industrial) and GC (General Commercial) to FST (Fee Simple Townhouses). Representatives for Hawks Development were not present. Ms. Bandy read a letter from Garvis L. Sams, Jr., Attorney for the applicant, requesting continuance of the hearing for both applications of Hawks Development until May 3, 1999.

Ms. Hafeezah Wesley, representative of the Steeplechase Subdivision Homeowners Association, was present and presented the concerns of the homeowners association as

follows: (1) zoning change; (2) 1,500 sq ft houses; (3) $125,000 starting price of houses; (4) no amenity package planned; (5) added traffic; and (6) overcrowding of schools.

SID BAXTER moved to postpone the hearing until May 3, 1999. GEORGE FORD seconded. The hearing was postponed by a VOTE OF 4 TO.

Dale Bandy presented a rezoning application, and opened the public hearing, for Hawks Development (Estate of J. Harris Dew), located off Lewis Road (19.940 acres). The request is to rezone from LI (Light Industrial) and GC (General Commercial) to FST (Fee Simple Townhouses). Representative for Hawks Development were not present. GEORGE FORD moved to postpone the hearing until May 3, 1999. SID BAXTER seconded. The hearing was postponed by a VOTE OF 4 TO O.

Dale Bandy presented the first reading of ORDINANCE 99-3, and opened the public hearing, amending the Zoning Ordinance adopted in 1987 to provide for changes to the Tree Protection and Replacement Ordinance. No one signed up to speak for or against the ordinance change.

Dale Bandy presented the first reading of ORDINANCE 99-4, and opened the public hearing, to annex the following unincorporated island of property:

Parcel 2, Land Lot 725, 19th District, 2nd Section,
Cobb County, Georgia
Parcel 9, Land Lot 725, 19th District, 2nd Section,
Cobb County, Georgia
Parcel 3, Land Lot 682, 19th District, 2nd Section,
Cobb County, Georgia
Parcel 4, Land Lot 726, 19th District, 2nd Section,
Cobb County, Georgia

Parcel 1, Land Lot 726, 19th District, 2nd Section, Cobb County, Georgia
Parcel 2, Land Lot 726, 19th District, 2nd Section, Cobb County, Georgia
Parcel 5, Land Lot 726, 19th District, 2nd Section, Cobb County, Georgia
Parcel 6, Land Lot 726, 19th District, 2nd Section, Cobb County, Georgia
Parcel 8, Land Lot 726, 19th District, 2nd Section, Cobb County, Georgia

Mr. Tommy Little, 3270 New Macland Road and Mr. Ben E. Rush, 3228 New Macland Road were present signed up to speak during the public hearing. Mr. Little spoke in opposition to the annexation.

The public hearing was closed.

Dale Bandy presented an alcoholic beverage license application, and opened the public hearing, for Christopher Lee Bishoff (Publix), 3721 New Macland Road. The application request is for beer and wine package only. Mr. Bishoff was present. No one signed up to speak for or against the application. Mr. Bishoff stated Publix has training for all cashiers for identifying customers purchasing alcoholic beverages; he stated he understands the City of Powder Springs does not allow the sale of alcoholic beverages on Sunday; and the store hours are to be 7:00 AM to 10:00 PM, sevens [sic] days a week. The store is more than 600 feet from the nearest church or school. The projected opening date for the store is planned for May 6, 1999.

SID BAXTER moved to approve. GEORGE FORD seconded. APPROVED 4 TO 0.

Dale Bandy presented RESOLUTION 99-10 authorizing the Mayor to execute a loan agreement with the Georgia Environmental Facilities Authority (GEFA) to finance sewer extensions for the Warren Farm development and the Hill Road area sewers. PAT VAUGHN moved to approve. BRAD HULSEY seconded. APPROVED 4 TO 0. (If all the money is not needed, the City is not obligated to take it.)

Dale Bandy presented RESOLUTION 99-11 authorizing the Mayor to execute a contract between Emery & Garrett Groundwater, Inc. (Phase 3), and the City of Powder Springs. Cost is not to exceed $75,000. PAT VAUGHN moved to approve. BRAD HULSEY seconded. APPROVED 4 TO 0.

Dale Bandy presented RESOLUTION 99-12 authorizing the Mayor to execute a Community Development Block Grant sub-recipient agreement for FY 1999 by the Cobb County Board of Commissioners in the amount of $50,004. GEORGE FORD moved to approve. PAT VAUGHN seconded. APPROVED 4 TO 0.

Dale Bandy presented RESOLUTION 99-13 proclaiming the week of March 29, 1999 – April 4, 1999 as "Community Development Block Grant Week" in the City of Powder Springs. BRAD HULSEY moved to approve. PAT VAUGHN seconded. APPROVED 4 TO 0.

Dale Bandy presented a Land Use Permit application for Douglas E. Sardonell, 3891 Blythewood Circle, for the purpose of a home occupation business. Charlene Sardonell was present and stated the business has been relocated in a commercial area and requested the application be withdrawn. BRAD HULSEY moved to grant the

withdrawal [sic] the application. GEORGE FORD seconded. APPROVED 4 TO 0.

COUNCIL REPORTS:

George Ford – no report.

Brad Hulsey – stated Old Lost Mountain Road is now open.

Mr. Hulsey expressed his appreciation to the employees that donated to the March of Dimes for WalkAmerica and also stated there will be a drawing for a free dinner at Crawdadeez Restaurant. Mr. Hulsey commended Betty Brady for help in collecting the donations.

Sid Baxter – expressed his appreciation for the donations for the March of Dimes.

Mr. Baxter stated the recent Mayor and Council Retreat was successful.

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FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EVA CHARLENE SARDONELL and DOUGLAS SARDONELL, Plaintiffs v. GARY NORIEGA, individually, and as a Council Member, City of Powder Springs, WAYNE WRIGHT, individually, and as City Manager, City of Powder Springs, RICHARD SAILORS, individually and as Mayor, City of Powder Springs, VINCE BLACKMON, individually, and as Code Compliance Officer, and the CITY OF POWDER SPRINGS, Defendants.	CIVIL ACTION FILE NO. 1:99-CV-1921-JEC

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3.

I take the minutes for the City Council meetings.

4.

I keep the official audio tapes of the City Council meetings.

5.

I listened to that portion of the audio tape of the April 5, 1999 City Council meeting dealing with the issues involved in the above referenced case. I completed a transcription of that portion of the tape. A copy of my transcription is attached as Exhibit A to this Affidavit.

6.

To the best of my knowledge, the transcription attached hereto as Exhibit A is true and correct.

7.

I have also attached to this Affidavit the audio tape from which I made this transcription.

8.

Further Affiant saith nought.

Respectfully submitted this 8th day of December, 2000.

Sworn to before me this 8th day of December, 2000.

/s/ Betty Brady
BETTY BRADY

/s/ Catherine Raper
NOTARY PUBLIC

Notary Public, Paulding
County, Georgia
My Commission Expires
Jan. 29, 2001

EXHIBIT A

TRANSCRIPTION FROM CITY OF POWDER SPRINGS CITY COUNCIL MEETING 4/5/99 CASSETTE TAPE

MS. BANDY: The final item on the agenda is Land Use Permit of Douglas E. Sardonell, 3891 Blythewood Circle for a home occupation permit to obtain a land use permit for the purpose of a home occupation business in R-20 zoning. I see Ms. Sardonell is here.

MS. SARDONELL: Actually we already have a home occupation that was so we could park our vans at our home. But I do have where we have a commercial location now. I would still like for you to vote on that because I do still want to be able to park my vans at my house in the event that I need to. We own five vehicles and if my car is in the shop it's dumb for me to go rent a vehicle. All five of our vehicles, actually we own seven in

all but they are all tagged, they are all inspected, they all meet all the laws. There's nothing illegal about any of them and if we need to use them at our home then we should be able to park them there.

MS. BANDY: Now do I understand correctly though that you have moved your business license to a new address – so you don't you don't have a business license at this home address anymore right?

MS. SARDONELL: Right, right.

MS. BANDY: I, I think I understand what you're saying about the –

MS. SARDONELL: The vans is what's brought us here anyway.

MS. BANDY: Well the – I think that that [sic] you're right that the vans was kind of the catalyst of this – that the vans as tied to your home occupation license is what you were in violation of, um since you no longer have a business license at this address and you are not going to conduct an occupation out of this address anymore, uh we're not really dealing with the zoning restriction on parking your vehicle on your – in your driveway anyway. Am I correct about that? Am I interpreting that appropriately?

MS. SARDONELL: Can I clarify this? Because all since we've applied for this, the City Council has told me – we cannot park the van across the street at our other home, even if we moved license we cannot park those vans at that house and now it is okay for us to park our vans there?

COUNCIL MEMBER BRAD HULSEY: If you don't have a business license there.

COUNCIL MEMBER GEORGE FORD: Yeah.

MS. SARDONELL: We do not have a business office there.

MS. BANDY: And, as long as you're not conducting a business out of the home.

COUNCIL MEMBER GEORGE FORD: You said vans – how many vans?

MS. SARDONELL: Well we always keep two there usually.

COUNCIL MEMBER GEORGE FORD: Yeah, well you said you had about seven here so you know –

MS. SARDONELL: No we do have seven vehicles at home.

COUNCIL MEMBER GEORGE FORD: Right.

MS. SARDONELL: Yeah.

COUNCIL MEMBER GEORGE FORD: We don't want you to park them all right there.

MS. BANDY: No there are certain regulations –

MS. SARDONELL: No my driveway ain't that long – (laughter)

MS. BANDY: There's certain regulations – um- about parking on the street and that –

MS. SARDONELL: We don't do that.

MS. BANDY: and that kind of thing that –

COUNCIL MEMBER GEORGE FORD: Right.

MS. BANDY: that apply to residences and don't have anything to do with the business license.

MS. SARDONELL: Well that will – I'll address that. Also, how do I register – how do I sign up to address other issues like the one he just mentioned?

MS. BANDY: I'm not sure of the question – sign up to address other issues?

MS. SARDONELL: Yeah, if I want to speak on other issues – what do I have to do?

MAYOR SAILORS: When you come in we've got a sign-up form out there on the counter as you come in and you just sign your name there and when we have citizen's comments – we call you up and you speak.

MS. SARDONELL: Okay, so this issue is resolved? We can leave our vans there when we need to?

MS. BANDY: I – as long as they're not in violation of any other City ordinance. I'm not really in the position to tell you what – you know what your – what the vans are doing right now cause I, you know, I don't know. But as long as you're not in violation of any other City ordinance, I mean you're not operating a business out of your home. The restrictions on business vehicles are tied to your business license.

MS. SARDONELL: Cause like today I was using one of the vans. So, and that's all.

MS. BANDY: And uh.

COUNCIL MEMBER GEORGE FORD: As long [sic] you weren't conducting business.

MS. SARDONELL: No I wasn't.

COUNCIL MEMBER BRAD HUSLEY: Do we need to uh –

COUNCIL MEMBER GEORGE FORD: Okay.

COUNCIL MEMBER BRAD HULSEY: withdraw or –

MS. SARDONELL: Well, I – I don't really want to withdraw, I mean you can vote yea, you can vote no, you can just say it's resolved that we don't have the business there and –

COUNCIL MEMBER BRAD HULSEY: I was asking Ms. Bandy

MS. SARDONELL: Oh I'm sorry.

COUNCIL MEMBER BRAD HULSEY: but legally we need to do that.

MS. BANDY: Legally it is a – a withdrawal of the request from that address because it's no longer necessary, the business license has been moved. So we really just need your vote on the withdrawal.

COUNCIL MEMBER BRAD HULSEY: Okay, move that we, we grant the withdrawal request?

MS. BANDY: Yes.

COUNCIL MEMBER BRAD HULSEY: I move that we grant the withdrawal request of the land use permit.

COUNCIL MEMBER GEORGE FORD: I'll second that.

MAYOR SAILORS: We have a motion and a second to grant the withdrawal of the land use permit for Douglas Sardonell at 3891 Blythewood Circle. All in favor of granting the withdrawal, please indicate with the uplifted hand. Four to zero.

MS. SARDONELL: Thank you. Can I – can I – is it too late to make a comment on something else or do I need to come to the next meeting?

MAYOR SAILORS: No, go ahead.

MS. BANDY: It's up to the Mayor.

MAYOR SAILORS: Go ahead.

MS. SARDONELL: Okay, my question is this – as elected officials, okay? And if you – cause I understand you can't be everywhere at once. And I understand because compliance officers cannot be everywhere at once, so my questions still is though, as elected officials, when you see someone that's breaking the local codes and ordinances, is it – it's still up to you whether someone's complained or not to enforce those?

COUNCIL MEMBER BRAD HULSEY: Yes mam [sic].

COUNCIL MEMBER GEORGE FORD: Yes, it sure is.

MAYOR SAILORS: Anything that if, anytime you've been advised of something then you become part of it. If you know about something and you don't take any action then you are part of it. So if you call me up and say

so and so and so and so is breaking the law and I don't report it through the channels, then I hadn't done my job.

MS. SARDONELL: But, no, I'm saying if you yourself see it. This is saying theoretically, if you yourself see it and you don't do anything about it then actually you would be breaking the law yourself?

MAYOR SAILORS: Well I guess you would be if –

MS. SARDONELL: I mean as elected officials.

MS. BANDY: That's not

MS. SARDONELL: Not breaking the law – but as what I'm saying is as the elected officials to uphold the laws and ordinances when you see something in violation, isn't it still up to you to take the necessary steps so that the code compliance officer is aware of it?

COUNCIL MEMBER GEORGE FORD: Right, but a lot of times here you need someone to bring it to your attention really.

MS. SARDONELL: I realize that.

COUNCIL MEMBER GEORGE FORD: Even though you are looking at the thing sometime it just doesn't ring a bell of an ordinance or code.

COUNCIL MEMBER SID BAXTER: Your question on my part?

COUNCIL MEMBER BRAD HULSEY: Yes.

COUNCIL MEMBER SID BAXTER: When I see something that I know is in violation, I bring it to Mr.

Wright's attention and then they follow the channels to take care of it.

MS. SARDONELL: Okay.

MAYOR SAILORS: I would venture to say you could ask Mr. Wright that there's hardly a week that goes by that some member of this body doesn't drop him a note or a phone call with something that somebody has come to us with or we have seen ourselves.

MS. SARDONELL: Yeah.

MAYOR SAILORS: And you can't see everything and you can't police everything. Of course, it's not our job to police but, to answer your question, yeah we pass along on a regular basis.

MS. SARDONELL: That answers my question, thank you.

MS. BANDY: Thank you.

MS. BANDY: And that's it for me Mr. Mayor.

MAYOR SAILORS: Well thank you Ms. Bandy, you did an outstanding job.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EVA CHARLENE SARDONELL and DOUGLAS SARDONELL, Plaintiffs v. GARY NORIEGA, individually, and as a Council Member, City of Powder Springs, WAYNE WRIGHT, individually, and as City Manager, City of Powder Springs, RICHARD SAILORS, individually and as Mayor, City of Powder Springs, VINCE BLACKMON, individually, and as Code Compliance Officer, and the CITY OF POWDER SPRINGS, Defendants.	CIVIL ACTION FILE NO. 1:99-CV-1921-JEC

AFFIDAVIT OF CATHERINE RAPER

PERSONALLY appeared before me, an officer duly authorized to administer oaths, Catherine Raper, who, being duly sworn, deposes and states as follows:

1.

My name is Catherine Raper. I am over the age of eighteen and competent to make this Affidavit.

2.

I serve as Permits and Licensing Coordinator for the City of Powder Springs. In that capacity, I am responsible for the maintenance of all business licenses issued by the City.

3.

Attached hereto is Exhibit 1 are true and accurate copies of business licenses issued to Douglas Sardonell.

4.

On March 31, 1999, Douglas Sardonell requested that the business license issued to A Cool Flame Heating and Air Conditioning, Inc. be transferred from 3891 Blythewood Circle to 4018 Lindley Road, Suite 2A, Powder Springs, Georgia, 30127.

5.

In fulfillment of this request, I transferred the license on March 31, 1999. A copy of the reissued license is attached hereto as Exhibit 2.

6.

Further affiant sayeth not.

Respectfully submitted this 4th day of December, 2000.

/s/ Catherine Raper
CATHERINE RAPER

Sworn to before me this 4th
day of December, 2000.

/s/ Betty G. Brady
Notary Public
Notary Public, Cobb County, Georgia
My Commission Expires July 11, 2001

EXHIBIT 1

CITY OF POWDER SPRINGS
P.O. BOX 46
POWDER SPRINGS, GEORGIA 30073
PHONE – 943-1666

Tax Certificate
Professional – Occupational

A COOLFLAME HEATING & AIR, INC.
3891 Blythewood Circle
Powder Springs, Georgia 30073

No.: 000546
Date of Issue: 01/01/95
Douglas E. Sardonell,
Owner

in consideration of which Powder Springs, Georgia, has granted a certificate for carrying on the business of Heating & Air Conditioning.

This Certificate Expires On December 31, 1995
Amount Due: 85.00

Witness my hand and seal with day and year above written

/s/ Betty Brady cr
Betty Brady *City Clerk*
FILE COPY

CITY OF POWDER SPRINGS
P.O. BOX 46
POWDER SPRINGS, GEORGIA 30073
PHONE – 943-1666

Tax Certificate
Professional – Occupational

A COOLFLAME
HEATING & AIR, INC.
3891 BLYTHEWOOD
CIRCLE
POWDER SPRINGS, GA
30073

No.: 000001
Date of Issue: 1/01/96
DOUGLAS E SARDONELL,
Owner

in consideration of which Powder Springs, Georgia, has granted a certificate for carrying on the business of HEATING & A/C CONTRACTOR.

This Certificate Expires On December 31, 1996
Amount Due: 85.00

Witness my hand and seal with day and year above written

Betty Brady *City Clerk*
FILE COPY 000000567

CITY OF POWDER SPRINGS
P.O. BOX 46
POWDER SPRINGS, GEORGIA 30073
PHONE – 943-1666

Tax Certificate
Professional – Occupational

A COOLFLAME
HEATING & AIR, INC.
3891 BLYTHEWOOD
CIRCLE
POWDER SPRINGS, GA
30073

No.: 000102
Date of Issue: 1/01/97
DOUGLAS E SARDONELL,
Owner

in consideration of which Powder Springs, Georgia, has granted a certificate for carrying on the business of HEATING & A/C CONTRACTOR.

This Certificate Expires On December 31, 1997
Amount Due: 85.00

Witness my hand and seal with day and year above written

Betty Brady *City Clerk*
FILE COPY 000000567

CITY OF POWDER SPRINGS
P.O. BOX 46
POWDER SPRINGS, GEORGIA 30073
PHONE – 943-1666

Tax Certificate
Professional – Occupational

A COOLFLAME
HTG & AIR, INC.
3891 BLYTHEWOOD
CIRC
POWDER SPRINGS, GA
30127

No.: 000226
Date of Issue: 02/03/98
DOUGLAS E SARDONELL,
Owner

in consideration of which Powder Springs, Georgia, has granted a certificate for carrying on the business of CLASS A-1.

This Certificate Expires On December 31, 1998

~~160.00~~
Amount Due: 235.00

Witness my hand and seal with day and year above written

_____
City Clerk

FILE COPY

EXHIBIT 2

CITY OF POWDER SPRINGS
P.O. BOX 46
POWDER SPRINGS, GEORGIA 30073
PHONE – 943-1666

Tax Certificate
Professional – Occupational

A COOLFLAME
HTG & AIR, INC.
~~3891 BLYTHEWOOD~~
~~CIRC~~ 4818 Lindley Rd – Ste 2A
POWDER SPRINGS, GA
30127

No.: 000063
Date of Issue: 12/28/98
(3/31/99)
DOUGLAS E SARDONELL,
Owner

in consideration of which Powder Springs, Georgia, has granted a certificate for carrying on the business of CLASS A-1.

This Certificate Expires On December 31, 1999
Amount Due: 160.00

PAID
DEC 23 1998
21.85

Witness my hand and seal with day and year above written

_____
City Clerk

FILE COPY

U.S. Census Bureau

QT-PL. **Race, Hispanic or Latino, and Age: 2000**
Data Set: Census 2000 Redistricting Data (Public Law 9
Geographic Area: **Powder Springs CCD, Cobb County**

NOTE: For information on confidentiality protection, nonsampling erro
http://factfinder.census.gov/home/en/datanotes/expplu.html.

Subject
RACE
Total population
One race
White
Black or African American
American Indian and Alaska Native
Asian
Native Hawaiian and Other Pacific Islander
Some other race
Two or more races
HISPANIC OR LATINO AND RACE
Total population
Hispanic or Latino (of any race)
Not Hispanic or Latino
One race
White
Black or African American
American Indian and Alaska Native
Asian
Native Hawaiian and Other Pacific Islander
Some other race
Two or more races

(X) Not applicable
Source: U.S. Census Bureau, Census 2000 Redistricting Da
Matrices PL 1, PL 2, PL 3, and PL 4

-171) Summary File
Georgia

and definitions, see

All ages		18 years and over	
Number	Percent	Number	Percent
31,741	**100.0**	**21,828**	**100.0**
31,214	98.3	21,593	98.9
20,419	64.3	14,864	68.1
9,722	30.6	6,041	27.7
71	0.2	52	0.2
361	1.1	264	1.2
13	0.0	9	0.0
628	2.0	363	1.7
527	1.7	235	1.1
31,741	**100.0**	**21,828**	**100.0**
1,369	4.3	844	3.9
30,372	95.7	20,984	96.1
29,975	94.4	20,802	95.3
19,854	62.6	14,482	66.3
9,634	30.4	5,983	27.4
50	0.2	41	0.2
355	1.1	258	1.2
12	0.0	8	0.0
70	0.2	30	0.1
397	1.3	182	0.8

a (Public Law 94-171) Summary File,

U.S. Census Bureau

DP-1. **Profile of General Demographic Characteristics: 2000**
Data Set: Census 2000 Summary File 1 (SF1) 100-Percent Data
Geographic Area: **Powder Springs CCD, Cobb County, Georgia**

NOTE: For information on confidentiality protection, nonsampling error, and definitions, see http://factfinder.census.gov/home/en/datanotes/expsf1u.htm.

Subject	Number	Percent
Total population	31,741	100.0
SEX AND AGE		
Male	15,421	48.6
Female	16,320	51.4
Under 5 years	2,309	7.3
5 to 9 years	2,793	8.8
10 to 14 years	3,077	9.7
15 to 19 years	2,564	8.1
20 to 24 years	1,415	4.5
25 to 34 years	4,722	14.9
35 to 44 years	6,578	20.7
45 to 54 years	4,248	13.4
55 to 59 years	1,230	3.9
60 to 64 years	800	2.5
65 to 74 years	1,117	3.5
75 to 84 years	629	2.0
85 years and over	259	0.8
Median age (years)	33.3	(X)
18 years and over	21,828	68.8
Male	10,239	32.3

Female	11,589	36.5
21 years and over	20,668	65.1
62 years and over	2,484	7.8
65 years and over	2,005	6.3
Male	771	2.4
Female	1,234	3.9
RACE		
One race	31,214	98.3
White	20,419	64.3
Black or African American	9,722	30.6
American Indian and Alaska Native	71	0.2
Asian	361	1.1
Asian Indian	76	0.2
Chinese	40	0.1
Filipino	76	0.2
Japanese	19	0.1
Korean	42	0.1
Vietnamese	26	0.1
Other Asian[1]	82	0.3
Native Hawaiian and Other Pacific Islander	13	0.0
Native Hawaiian	7	0.0
Guamanian or Chamorro	2	0.0
Samoan	2	0.0
Other Pacific Islander[2]	2	0.0
Some other race	628	2.0
Two or more races	527	1.7

[1] Other Asian alone, or two or more Asian categories.

[2] Other Pacific Islander alone, or two or more Native Hawaiian and Other Pacific Islander categories.

Race alone or in combination with one or more other races[3]		
White	20,818	65.6
Black or African American	9,986	31.5
American Indian and Alaska Native	209	0.7
Asian	465	1.5
Native Hawaiian and Other Pacific Islander	26	0.1
Some other race	808	2.5
HISPANIC OR LATINO AND RACE		
Total population	**31,741**	**100.0**
Hispanic or Latino (of any race)	1,369	4.3
Mexican	633	2.0
Puerto Rican	202	0.6
Cuban	65	0.2
Other Hispanic or Latino	469	1.5
Not Hispanic or Latino	30,372	95.7
White alone	19,854	62.6
RELATIONSHIP		
Total population	**31,741**	**100.0**
In households	31,448	99.1
Householder	10,390	32.7
Spouse	6,767	21.3
Child	11,312	35.6
Own child under 18 years	8,994	28.3
Other relatives	1,875	5.9
Under 18 years	783	2.5
Nonrelatives	1,104	3.5
Unmarried partner	408	1.3

[3] In combination with one or more other races listed. The six numbers may add to more than the total population and the six percentages may add to more than 100 percent because individuals may report more than one race.

In group quarters	293	0.9
Institutionalized population	248	0.8
Noninstitutionalized population	45	0.1
HOUSEHOLDS BY TYPE		
Total households	**10,390**	**100.0**
Family households (families)	8,588	82.7
With own children under 18 years	4,893	47.1
Married-couple family	6,767	65.1
With own children under 18 years	3,771	36.3
Female householder, no husband present	1,401	13.5
With own children under 18 years	862	8.3
Nonfamily households	1,802	17.3
Householder living alone	1,416	13.6
Householder 65 years and over	333	3.2
Households with individuals under 18 years	5,307	51.1
Households with individuals 65 years and over	1,322	12.7
Average household size	3.03	(X)
Average family size	3.32	(X)
HOUSING OCCUPANCY		
Total housing units	**10,667**	**100.0**
Occupied housing units	10,390	97.4
Vacant housing units	277	2.6
For seasonal, recreational, or occasional use	13	0.1
Homeowner vacancy rate (percent)	1.3	(X)
Rental vacancy rate (percent)	4.5	(X)

HOUSING TENURE		
Occupied housing units	**10,390**	**100.0**
Owner-occupied housing units	9,360	90.1
Renter-occupied housing units	1,030	9.9
Average household size of owner-occupied unit	3.01	(X)
Average household size of renter-occupied unit	3.17	(X)

(X) Not applicable

Source: U.S. Census Bureau, Census 2000 Summary File 1, Matrices P1, P3, P4, P8, P9, P12, P13, P17, P18, P19, P20, P23, P27, P28, P33, PCT5, PCT8, PCT11, PCT15, H1, H3, H4, H5, H11 and H12.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
2211 UNITED STATES COURTHOUSE
75 SPRING STREET, SW
ATLANTA, GEORGIA 30303-3361

LUTHER D. THOMAS
CLERK OF COURT

CIVIL SECTION
404-215-1655

July 16, 2001

USDC Civil Action No. 1:99-cv-1921-JEC

USCA No. 01-12824-E

In Reference: ***Eva Charlene Sardonell, et al. v. Gary Noriega, et al.***

CERTIFICATE OF READINESS OF RECORD ON APPEAL

Pursuant To Fed.R.App.P. 11(c), the Clerk of the District Court for the Northern District of Georgia hereby certifies that, as shown on the enclosed index, the record is complete for the purposes of this appeal. The record (including the transcript or parts thereof designated for inclusion and all necessary exhibits) consists of:

3 Volume(s) of pleadings

10 Volume(s) of depositions

__ Volume(s) of transcripts

__ Volume(s) of exhibits

__ Other:

Sincerely,

Luther D. Thomas
Clerk of Court
By: /s/ K. A. Carter
Deputy Clerk

Enclosures

CLOSED APPEAL

U.S. District Court
U.S. District Court for the Northern District
of Georgia (Atlanta

CIVIL DOCKET FOR CASE #: 99-CV-1921

Sardonell, et al v. Noriega, et al
Assigned to: Judge Julie E. Carnes
Demand: $1,000,000
Lead Docket: None
Dkt # in DD USCA – 11th Cir.: is: 00-15992
Dkt # in A USCA 11th Circuit: is: 00-12436
Filed: 07/27/99
Jury demand: Plaintiff
Nature of Suit: 440
Jurisdiction: Federal Question

Cause: 42:1983 Civil Rights – Action for deprivation of rights

EVA CHARLENE SARDONELL
plaintiff

George Melville Johnson
[term 11/09/99]
[COR LD NTC]
George Melville Johnson &
Associates
44 Broad Street, N.W.
The Grant Building, Suite 222
Atlanta, GA 30303
404-524-9111

Jacqueline K. Taylor
[COR LD NTC]
Taylor & Associates
1950 Spectrum Circle
400 Corporate Spectrum Building
Atlanta, GA 30067
770-857-4383

DOUGLAS SARDONELL
plaintiff
George Melville Johnson
[term 11/09/99]
(See above)
[COR LD NTC]

Caryl Sumner Black
[COR LD NTC]
Office of Caryl Sumner Black
5015 Oak Bluff Court
Atlanta, GA 30350
770-390-0101

Jacqueline K. Taylor
(See above)
[COR LD NTC]

GARY NORIEGA, individually and as Council Member, City of Powder Springs
defendant
Caryl Sumner Black
[COR LD NTC]
Office of Caryl Sumner Black
5015 Oak Bluff Court
Atlanta, GA 30350
77 – 390-0101

WAYNE WRIGHT, individually and as City Manager, City of Powder Springs
defendant
Caryl Sumner Black
(See above)
[COR LD NTC]

RICHARD SAILORS, individually
and as Mayor, City of Powder
Springs
defendant
Caryl Sumner Black
(See above)
[COR LD NTC]

VINCE BLACKMON, individually
and as Code Compliance Officer
defendant
Caryl Sumner Black
(See above)
[COR LD NTC]

CITY OF POWDER SPRINGS
defendant
Caryl Sumner Black
(See above)
[COR LD NTC]

7/27/99	1	COMPLAINT filed and summons(es) issued. Consent form to proceed before U.S. magistrate and pretrial instructions given to attorney; jury demand FILING FEE $150.00 receipt #442275 (aar) [Entry date 07/29/99]
7/27/99	2	ANSWERS TO MANDATORY DISCLOSURES by plaintiffs (aar) [Entry date 07/29/99]
8/31/99	—	Proposed consent order extending time for defts to answer [1-1] complaint until 9/30/99. to JEC (tcc) [Entry Date 09/01/99]
9/7/99	3	CONSENT ORDER by Judge Julie E. Carnes, extending time for defts to answer [1-1] complaint, Answer due 9/30/99 for City of Powder Spr, for Vince Blackmon, for

		Richard Sailors, for Wayne Wright, for Gary Noriega (cc) (tcc) [Entry date 09/09/99]
9/15/99	—	Added attorney for defendants: Caryl B. Sumner. (pa) [Entry date 09/15/99]
9/30/99	4	ANSWER by defendants to complaint [1-1] Discovery ends 2/27/00 (tcc) [Entry date 09/30/99]
10/19/99	5	MOTION by plaintiff to substitute attorney with brief in support, proposed order attached. (tcc) [Entry date 10/20/99]
10/29/99	6	Joint Preliminary Statement and Scheduling Order. (to judge) (tcc) [Entry date 11/01/99]
11/2/99	—	SUBMITTED to Judge Julie E. Carnes on [5-1] motion to substitute attorney (tcc) [Entry date 11/02/99]
11/5/99	7	Attorney appearance for plaintiffs by Jaqueline K. Taylor (tcc) [Entry date 11/08/99]
11/8/99	—	Summons issued for defendant Vince Blackmon (tcc) [Entry date 11/08/99]
11/9/99	8	ORDER by Judge Julie E. Carnes, the parties are reminded and put on notice that all future pleadings and other papers filed in this case must be in compliance with this Court's local rules regarding font size, margins and footnotes. The Court will not accept pleadings that violate the above local rules, GRANTING [5-1] motion to substitute attorney terminating attorney George Melville Johnson for Douglas Sardonell, attorney George Melville Johnson

for Eva Charlene Sardonell and adding attorney Jacquelin K. Taylor for Douglas Sardonell, attorney Jacqueline K. Taylor for Eva Charlene Sardonell. (cc) (tcc) [Entry date 11/10/99]

11/9/99 — Terminated submissions. (tcc) [Entry date 11/10/99]

11/30/99 — ENDORSED ORDER by Judge Julie E. Carnes APPROVING [6-1] preliminary statement (cc) (tcc) [Entry date 12/01/99]

11/30/99 9 ORDER by Judge Julie E. Carnes, Discovery ends 3/30/00, any motions for summary judgment must be filed by 4/19/00, and if no motions for summary judgment are filed, the proposed consolidated pre-trial order due on 5/1/00, however, if a motion for summary judgment is filed, the proposed consolidated pretrial order will be due w/in 30 days of the Court's ruling on the motion for summary judgment, [9-1] order to be submitted on 5/2/00 if the parties have not filed a motion for summary judgment or proposed consolidated pretrial order (cc) (tcc) [Entry date 12/01/99]

12/15/99 — Summons issued for Vince Blackmon, City of Powder Springs. (wse) [Entry date 12/16/99]

1/12/00 10 MOTION by defendants for abstention with brief in support. (wse) [Entry date 01/13/00]

1/12/00 11 Notice by CRD, the parties have failed to file certificate of interested persons, and the dft has failed to file mandatory disclosures. Counsel are directed to comply with the local rules on 1/24/00. [11-1] notice to be

submitted to Judge Carnes on 1/25/00 if the parties have not filed the above pleadings. The parties are also reminded of local rule re: font size. (Copies served by CRD) (wse) [Entry date 01/13/00]

1/14/00 12 ANSWERS TO MANDATORY DISCLOSURES by all defendants. (wse) [Entry date 01/18/00]

1/21/00 13 (Joint) Certificate of interested persons. (to judge) (wse) [Entry date 01/24/00]

1/21/00 14 MOTION by plaintiff for leave to file amendment to complaint w/ a proposed order attached. The proposed amendment to complaint is attached. (wse) [Entry date 01/24/00]

1/24/00 15 MOTION by defendants for leave to file amendment to answer defenses with a proposed order attached. The amended answer & defenses is attached. (wse) [Entry date 01/24/00]

1/31/00 — SUBMITTED to Judge Julie E. Carnes on [10-1] motion for abstention (wse) [Entry date 01/31/00]

1/31/00 16 Joint MOTION to extend time by 20 days for plas to reply to dfts [10-1] motion for abstention. a proposed order is attached. (To JEC for approval) (wse) [Entry date 02/01/00]

1/31/00 17 MOTION by defendants for summary judgment with brief & stmt of material facts in support. (Notice mailed to all parties) (wse) [Entry date 02/01/00]

2/7/00	—	SUBMITTED to Judge Julie E. Carnes on [14-1] motion for leave to file amendment to complaint. FILE IN CHAMBERS. (wse) [Entry date 02/07/00]
2/10/00	—	SUBMITTED to Judge Julie E. Carnes on [15-1] motion for leave to file amendment to answer defenses. FILE IN CHAMBERS. (wse) [Entry date 02/10/00]
2/10/00	18	ORDER by Judge Julie E. Carnes GRANTING [16-1] joint motion to extend time by 20 days from 1/24/00 for plas to reply to dfts [10-1] motion for abstention. (cc) (pdw) [Entry date 02/11/00]
2/10/00	19	ORDER by Judge Julie E. Carnes GRANTING plas' [14-1] motion for leave to file amendment to complaint (cc) (pdw) [Entry date 02/11/00] [Edit date 02/11/00]
2/10/00	20	ORDER by Judge Julie E. Carnes GRANTING dfts' [15-1] motion for leave to file amendment to answer defenses (cc) (pdw) [Entry date 02/11/00]
2/10/00	21	Amendment to [1-1] complaint by plaintiffs. (pdw) [Entry date 02/11/00]
2/10/00	22	AMENDED ANSWER by defendants to complaint [1-1] (pdw) [Entry date 02/11/00]
2/11/00	—	Terminated submissions. (pdw) [Entry date 02/11/00]
2/11/00	23	Notice by CRD, the parties are reminded of font size. (Copies served by CRD) (wse) [Entry date 02/14/00]

2/14/00	24	Brief by plaintiff in opposition to [10-1] motion for abstention (wse) [Entry date 02/15/00]
2/15/00	—	SUBMITTED to Judge Julie E. Carnes on [10-1] motion for abstention (wse) [Entry date 02/15/00]
2/18/00	25	MOTION by plaintiffs to dismiss or in the alternative to continue consideration of first motion for sum.jgm. with affidavits of Douglas Sardonell, E. Charlene Sardonell and Jacqueline K. Taylor in support (bsm) [Entry date 02/22/00]
2/22/00	26	MOTION by defendant for leave to file amendment to answer & defenses with a proposed order attached. (The amended answer & defenses are attached.) (wse) [Entry date 02/23/00]
2/22/00	28	AMENDED ANSWER & defenses to [22-1] answer by defendants. (wse) [Entry date 02/28/00]
2/23/00	27	MOTION by plaintiffs to extend time by 10 days from the date of notification of the Court's ruling on the pla's motion to dismiss to reply to dfts [17-1] motion for summary judgment with a proposed order attached. (wse) [Entry date 02/23/00]
2/25/00	—	SUBMITTED to Judge Julie E. Carnes on [17-1] motion for summary judgment. FILE IN CHAMBERS. (wse) [Entry date 02/25/00]
2/28/00	29	Brief in response by defendants to plas' brief in opposition to [10-1] motion for abstention (wse) [Entry date 02/29/00]

2/29/00	30	Reply by defendants to plas' [25-1] motion to dismiss, [25-2] motion to continue consideration of first motion for sum.jgm. (wse) [Entry date 03/01/00]
3/1/00	—	SUBMITTED to Judge Julie E. Carnes on [25-1] motion to dismiss, [25-2] motion to continue consideration of first motion for sum.jgm. FILE IN CHAMBERS. (wse) [Entry date 03/01/00]
3/3/00	31	ORDER by Judge Julie E. Carnes DENYING [17-1] motion for summary judgment by City of Powder Spr, Vince Blackmon, Richard Sailors, Wayne Wright, Gary Noriega, denying as moot the [25-1] motion to dismiss by Douglas Sardonell, Eva Charlene Sardonell, denying as moot the [25-2] motion to continue consideration of first motion for sum.jgm. by Douglas Sardonell, Eva Charlene Sardonell, GRANTING [26-1] motion for leave to file amendment to answer & defenses, and taking under advisement [10-1] motion for abstention. For the present, discovery is suspended. (CC) (wse) [Entry date 03/06/00]
3/3/00	—	Terminated submissions. (wse) [Entry date 03/06/00]
3/9/00	32	MOTION by plaintiffs for hearing on defendants' motion for abstention with counsel's affidavit in support. (ck) [Entry date 03/10/00]
3/13/00	—	SUBMITTED to Judge Julie E. Carnes on [27-1] motion to extend time by 10 days from the date of notification of the Court's ruling on the pla's motion to dismiss to

reply to dfts [17-1] motion for summary judgment (wse) [Entry date 03/13/00]

3/17/00 33 Response by defendants to pla's [32-1] motion for hearing on defendants' motion for abstention (wse) [Entry date 03/20/00] [Edit date 03/20/00]

3/20/00 — SUBMITTED to Judge Julie E. Carnes on [32-1] motion for hearing on defendants' motion for abstention. FILE IN CHAMBERS. (wse) [Entry date 03/20/00] [Edit date 03/20/00]

3/21/00 34 ORDER by Judge Julie E. Carnes: [10-1] motion for abstention is taken under ADVISEMENT, and denying as moot the [27-1] motion to extend time by 10 days from the date of notification of the Court's ruling on the pla's motion to dismiss to reply to dfts [17-1] motion for summary judgment. The Court's order of 3/3/00 moots this motion. (cc) (wse) [Entry date 03/22/00]

3/21/00 — Terminated submissions. (wse) [Entry date 03/22/00]

4/6/00 35 ORDER by Judge Julie E. Carnes GRANTING [10-1] motion for abstention, DENYING [32-1] motion for hearing on defendants' motion for abstention by Douglas Sardonell, Eva Charlene Sardonell. The case is stayed pending the resolution of the parallel state court proceeding, and that the clerk administratively and statistically terminate the action, as resolution of the state proceeding may resolve the federal claims. Plas should inform the Court w/in 20 days of the resolution of the state court case whether

		any further action is necessary in this federal proceeding. (copies by CRD) (wse) [Entry date 04/07/00]
4/6/00	—	Terminated submissions. (wse) [Entry date 04/07/00]
4/6/00	—	Case terminated. (wse) [Entry date 04/07/00]
5/5/00	36	NOTICE OF APPEAL by plaintiff from [35-1] order FILING FEE $105.00 RECEIPT #454242 Appeal information sheet due 5/19/00 (crc) [Entry date 05/08/00]
5/8/00	—	Notice of appeal, certified copy of order and certified copy of docket to USCA RE: [36-1] appeal (crc) [Entry date 05/08/00]
5/17/00	37	Acknowledgment by USCA RE: [36-1] appeal USCA dkt no. 00-12436-A (epm) [Entry date 05/18/00]
6/1/00	38	Appeal information sheet RE: [36-1] appeal – USCA dkt #00-12436-A COR due 6/11/00 (epm) [Entry date 06/02/00]
9/1/00	39	MOTION by plaintiffs to reopen proceedings with a proposed order attached. (wse) [Entry date 09/05/00]
9/13/00	40	Response by defendants to [39-1] motion to reopen proceedings (aet) [Entry date 09/14/00]
9/20/00	—	SUBMITTED to Judge Julie E. Carnes on [39-1] motion to reopen proceedings (wse) [Entry date 09/20/00]
9/22/00	—	Submission Letter sent to USCA [36-1] appeal (epm) [Entry date 09/22/00]

10/3/00	41	ORDER by Judge Julie E. Carnes GRANTING [39-1] motion to reopen proceedings. As there is now no issue for Eleventh Circuit to resolve, plas should dismiss their appeal. (cc) (wse) [Entry date 10/04/00]
10/3/00	—	Case reopened. (wse) [Entry date 10/04/00]
10/3/00	—	USCA acknowledgment of Submission Letter RE: [36-1] appeal USCA #00-12436-A (epm) [Entry date 10/05/00]
10/4/00	—	Terminated submissions. (wse) [Entry date 10/04/00]
10/6/00	—	CERTIFICATE OF READINESS of appeal record with certified copy of docket mailed to USCA RE: [36-1] appeal USCA #00-12436-A (2 vols. pleadings) (epm) [Entry date 10/06/00]
10/10/00	42	Notice to take continuation of deposition of City of Powder Springs by plaintiff (wse) [Entry date 10/11/00]
10/13/00	43	Notice of change of address by plaintiffs atty. (wse) [Entry date 10/17/00]
10/18/00	—	USCA acknowledgment of COR RE: [36-1] appeal USCA #00-12436-A (epm) [Entry date 10/19/00]
10/23/00	—	Forwarded Certified Copy – Doc. #41 (Order) to the USCA RE: [36-1] appeal USCA #00-12436-A (epm) [Entry date 10/23/00]
10/26/00	—	Certified and transmitted record (2 vols of pleadings) to USCA RE: [36-1] appeal. USCA dkt no. 00-12436-A. (dfb) [Entry date 10/26/00]

11/1/00	44	NOTICE OF APPEAL by plaintiff from [41-1] order FILING FEE $105.00 RECEIPT #462125 Appeal information sheet due 11/15/00 (fms) [Entry date 11/14/00]
11/2/00	—	USCA acknowledgment of Record on Appeal (2 Volumes) RE: [36-1] appeal USCA #00-12436-A (kac) [Entry date 11/07/00] [Edit date 11/07/00]
11/3/00	45	AMENDED NOTICE OF APPEAL by plaintiff Eva Charlene Sardonell, plaintiff Douglas Sardonell from [41-1] order FILING FEE $105.00 RECEIPT #462125 (kac) [Entry date 11/14/00]
11/9/00	46	Certified copy of ORDER of USCA DISMISSING [36-1] appeal USCA dkt no. 00-12436-AA (Rec'd vol 1, 2 of 2) (wse) [Entry date 11/14/00]
11/14/00	—	Notice of appeal, cert copy of order and certified copy of docket to USCA RE: [44-1] appeal (fms) [Entry date 11/14/00]
11/14/00	—	Amended Notice of appeal, order and certified copy of docket to USCA RE: [45-1] appeal (kac) [Entry date 11/14/00] [Edit date 11/14/00]
11/17/00	—	USCA acknowledgment of Amended Notice of Appeal, certified docket and order RE: [45-1] appeal USCA #00-15992-DD (kac) [Entry date 11/22/00]
11/21/00	47	Acknowledgment by USCA RE: [44-1] appeal USCA dkt no. 00-15992-DD (kac) [Entry date 11/22/00]
12/12/00	48	MOTION by plaintiffs for leave to file plas' second amendment to complaint with a

		proposed order attached. A proposed second amendment to complaint is attached. (wse) [Entry date 12/13/00]
12/14/00	49	MOTION by defendants to file excess pages limitation with brief in support. (To JEC for approval) (wse) [Entry date 12/14/00]
12/14/00	50	MOTION by defendants for summary judgment with brief & stmt of material facts in support. (Notice mailed to all parties) (wse) [Entry date 12/14/00]
12/14/00	51	Notice & Request of filing original discovery & affidavits by defendants. (wse) [Entry date 12/14/00]
12/14/00	—	Deposition of DOUGLAS SARDONELL taken for defendants (wse) [Entry date 12/14/00]
12/20/00	52	ANSWER by defendants to proposed second amendment to complaint [1-1] (wse) [Entry date 12/20/00]
12/20/00	53	Brief by defendants in opposition to plas' [48-1] motion for leave to file plas' second amendment to complaint (wse) [Entry date 12/20/00]
1/3/01	54	ORDER by Judge Julie E. Carnes GRANTING [49-1] motion to file excess pages limitation (cc) (wse) [Entry date 01/04/01] [Edit date 01/12/01]
1/4/01	—	SUBMITTED to Judge Julie E. Carnes on [48-1] motion for leave to file plas' second amendment to complaint, [49-1] motion to file excess pages limitation (wse) [Entry date 01/04/01]

1/8/01	55	Notice of filing discovery, depositions (of Wayne Wright (vol 1 & 2), Gary Noriega, Mary Sitherwood, Betty Joe Murphy, Lt. James Freeland, and Eva Charlene Sardonell), and affidavits by plaintiffs. (wse) [Entry date 01/09/01]
1/8/01	56	Affidavits of Edward Harper, John Long, James McTyre, Gordon Powell, Sheila Powell, Douglas Sardonell, Loy Windham. (wse) [Entry date 01/09/01]
1/8/01	—	Depositions of GARY V. NORIEGA, BETTY JO MURPHY, MARY MADERA SITHERWOOD, LT. JAMES E. FREELAND, EVA CHARLENE SARDONELL, and WAYNE WRIGHT taken for plaintiffs. (wse) [Entry date 01/09/01]
1/8/01	57	REPLY by plaintiffs to dfts' opposition to plas' [48-1] motion for leave to file plas' second amendment to complaint (wse) [Entry date 01/09/01]
1/8/01	58	Memorandum by plaintiffs and opposition to dfts' [50-1] motion for summary judgment. Also included are plas stmt of material facts. (wse) [Entry date 01/10/01]
1/9/01	—	SUBMITTED to Judge Julie E. Carnes on [50-1] motion for summary judgment. FILE IN CHAMBERS. (wse) [Entry date 01/09/01]
1/10/01	59	ORDER by Judge Julie E. Carnes GRANTING [49-1] motion to file excess pages limitation (cc) (wse) [Entry date 01/11/01]

1/10/01	60	MOTION by plaintiff to strike portions of the dfts' brief in support of [50-1] motion for summary judgment (wse) [Entry date 01/11/01)
1/10/91	61	MOTION by plaintiffs for hearing on dfts' motion for sum jgm and plas' motion to strike (wse) [Entry date 01/11/01]
1/17/01	62	Certified copy of ORDER of USCA DISMISSING [44-1] appeal, and DISMISSING [45-1] appeal. USCA dkt no. 00-15992-DD (wse) [Entry date 01/18/01]
1/22/01	63	Response by defendants to plas' [60-1] motion to strike portions of the dfts' brief in support of [50-1] motion for summary judgment (wse) [Entry date 01/23/01]
1/22/01	64	RESPONSE by defendants in response to plas' memorandum in opposition to [50-1] motion for summary judgment (wse) [Entry date 01/23/01]
1/31/01	65	MOTION by plaintiff for leave of court to file excess pages limitation. (jph) [Entry date 02/01/01]
1/31/01	66	MOTION by plaintiff to continue consideration of dfts' motion for summary jugment with brief in support. (jph) [Entry date 02/01/01]
2/5/01	—	SUBMITTED to Judge Julie E. Carnes on [60-1] motion to strike portions of the dfts' brief in support of [50-1] motion for summary judgment, [61-1] motion for hearing on dfts' motion for sum jgm and plas' motion to strike (File in chambers) (jph) [Entry date 02/05/01]

2/22/01	—	SUBMITTED to Judge Julie E. Carnes on [65-1] motion for leave of court to file excess pages limitation, [66-1] motion to continue consideration of dfts' motion for summary jugment (File in chambers) (jph) [Entry date 02/22/01]
4/19/01	67	ORDER by Judge Julie E. Carnes DENYING [48-1] motion for leave to file plas' second amendment to complaint by Douglas Sardonell, Eva Charlene Sardonell, GRANTING [50-1] motion for summary judgment, DENYING [60-1] motion to strike portions of the dfts' brief in support of [50-1] motion for summary judgment by Douglas Sardonell, Eva Charlene Sardonell, DENYING [61-1] motion for hearing on dfts' motion for sum jgm and plas' motion to strike by Douglas Sardonell, Eva Charlene Sardonell, GRANTING [65-1] motion for leave of court to file excess pages limitation, denying as moot the [66-1] motion to continue consideration of dfts' motion for summary jugment by Douglas Sardonell, Eva Charlene Sardonell (cc) (jph) [Entry date 04/19/01]
4/19/01	68	JUDGMENT ENTERED for defendants against plaintiffs for costs of action (cc) (jph) [Entry date 04/19/01]
4/19/01	—	Case terminated. (jph) [Entry date 04/19/01]
5/16/01	69	NOTICE OF APPEAL by plaintiff from [68-1] judgment, [67-1] order Appeal information sheet due 5/30/01 (Appeal fee letter sent on 5/21/01) cc:USCA (jlm) [Entry date 05/21/01]

5/21/01	—	Notice of appeal, order, judgment, appeal fee ltr and certified copy of docket to USCA RE: [69-1] appeal (jlm) [Entry date 05/21/01]
5/24/01	—	Appeal fees received FILING FEE $105.00 RECEIPT #471734 RE: [69-1] appeal USCA dkt no. 01-12824-E (kac) [Entry date 05/29/01]
5/25/01	70	Acknowledgment by USCA RE: [69-1] appeal USCA dkt no. 01-12824-E (kac) [Entry date 05/29/01]
5/29/01	—	Forwarded docket sheets reflecting payment of appeal filing and docketing fees to the USCA RE: [69-1] appeal USCA #01-12824-E (kac) [Entry date 05/29/01]
6/5/01	—	USCA acknowledgment of certified copy of docket sheets reflecting payment of appeal filing and docketing fees RE: [69-1] appeal USCA #01-12824-E (kac) [Entry date 06/05/01]
6/29/01	71	Appeal information sheet RE: [69-1] appeal – USCA dkt #01-12824-E COR due 7/9/01 (kac) [Entry date 07/02/01]
7/16/01	—	CERTIFICATE OF READINESS of appeal record with certified copy of docket mailed to USCA RE: [69-1] appeal USCA #01-12824-E (3 Vols. pldgs, 10 Depositions) (kac) [Entry date 07/16/01]